

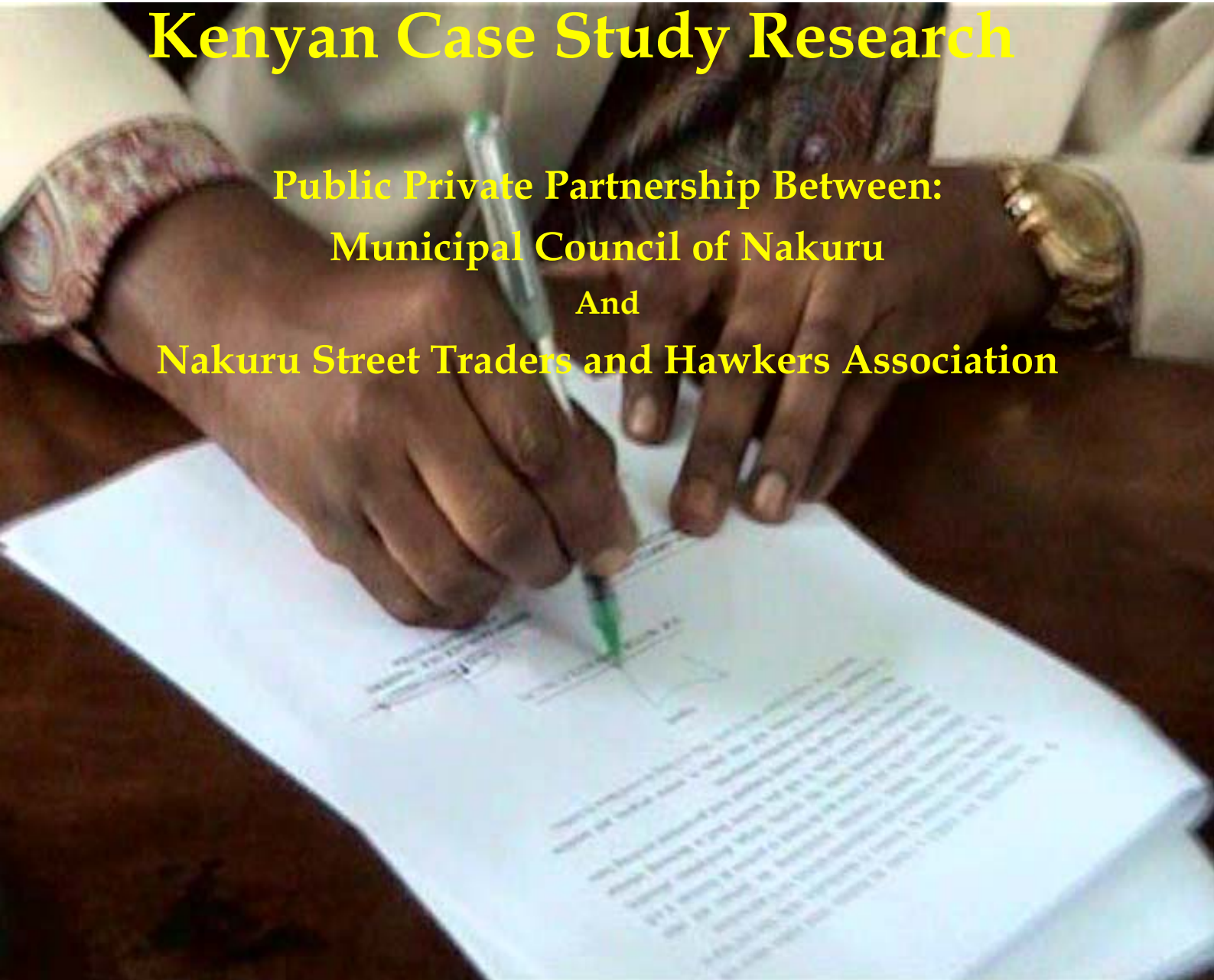
STREETNET INTERNATIONAL

Kenyan Case Study Research

**Public Private Partnership Between:
Municipal Council of Nakuru**

And

Nakuru Street Traders and Hawkers Association



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ABSTRACT

Nakuru Town has a large number as well as variety of informal street business activities, both stationary and mobile. These cut across trade, service delivery and manufacturing sectors. Chief is trade of products, followed by service delivery. The informal street business activities are operated from residential, industrial and Central Business District areas. Their concentration is however highest in the Central Business District, where the main areas the stationary street traders operate from are Kenyatta Avenue and Club Lane Road; and the mobile street traders are concentrated in the public transportation nodes.

The informal street business activities facilitate goods reaching the consumer. They also provide earnings to those not in formal employment; and, extra income to some who have other employment. They in addition are a source of revenue for the Municipal Council of Nakuru; and, play a role in the marketing chain of products.

A challenge presented by the informal business activities is their proliferation leading to congestion of the Central Business District. This slows pedestrian movement, causes inconvenience to customers to the Central Business District, and triggers off the displeasure of formal businesses trading within the Central Business District, as well as government agents whose duty is security enforcement. This challenge is explained by a lack of formal space for the street traders to carry out their activities. Prior to 13th August 2010, this challenge presented by the informal business activities was the basis applied by the Municipal Council of Nakuru in collaboration with the Provincial Administration to forcefully and arbitrarily evict the street business actors from the Central Business District. The enforcement was undertaken without inclusive consultations of all affected stakeholders to understand the problem and how best to resolve it. The street business activities braved the enforcers, and persisted with operating from the Central Business District.

On 13th August 2010, a Memorandum of Understanding (MoU) was entered between Nakuru Street Traders and Hawkers Association and the Municipal Council of Nakuru. The heart of the MoU was establishment of a favourable working environment, with no arbitrary evictions for street traders and hawkers operating within the Central Business District of Nakuru District. Signing of the agreement marked the beginning of a new chapter in the relationship between the local authority, and the street traders and hawkers. This report is a case study documenting the process leading to signing of the partnership agreement between the two parties. It also presents the achievements made and lessons learnt.

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ACRONYMS

Acronym	Full Name
AP	Administration Police
CBD	Central Business District
CBO	Community Based Organisation
DC	District Commissioner
DMSED	Department of Micro and Small Enterprise Development
ICC	International Coordinating Committee on Organising in the Informal Economy
IDPs	Internally Displaced Persons
KENASVIT	Kenya National Alliance of Street Vendors and Informal Traders
KEPSA	Kenya Private Sector Alliance
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KNBS	Kenya National Bureau of Statistics
MCN	Municipal Council of Nakuru
MDGs	Millennium Development Goals
MoI	Ministry of Industrialisation
MoU	Memorandum of Understanding
MSE	Micro and Small Enterprises
NASTHA	Nakuru Street Traders and Hawkers Association
NBA	Nakuru Business Association
NDDP	Nakuru District Development Plan
PC	Provincial Commissioner
UN	United Nations

DEFINITION OF KEY TERMS

The definition of key terms is derived from official Government of Kenya documents. This was considered appropriate as it is these definitions that are used with respect to law enforcement and hence of relevance to the issue under discussion in this report.

Enterprise: An undertaking or a business concern whether formal or informal engaged in production of goods or provision of services (MSE Bill, 2011)

Micro Enterprises: A firm, trade, service, industry or a business activity which employs less than ten people and may be formal or informal (MSE Bill, 2011; Sessional Paper No. 2 of 2005; Kenya Economic Report 2009).

Small Enterprise: A firm, trade, service, industry or a business activity which employs between ten and fifty people and may be formal or informal (MSE Bill, 2011; Sessional Paper No. 2 of 2005; Kenya Economic Report 2009).

Informal Enterprises: Enterprises that do not regularise their operations beyond the licensing requirements by Local Authorities (Kenya Economic Report 2009). When these enterprises operate outside the existing legislation, regulations and policies, they risk not receiving the public incentives, benefits and protection thereof (KIPRA, 2010). To better comprehend this definition of informal enterprises, please refer to: a) Annex 3 which provides the Municipal Council of Nakuru (Hawkers) By-Laws; and, b) Annex 4, which provides the steps and fees involved in registering a limited liability company.

Street Trading: Includes selling of newspapers, matches, flowers, food and drink and other articles, the distribution of handbills or other advertisements, and shoe-cleaning and any other like occupation carried on in any public place (Local Government Act Cap 265 of the Laws of Kenya).

Hawker: Includes a person who, whether as principal, agent or employee: a) For the purpose of carrying on trade by the sale or exchange of goods, wares, merchandise or refreshments places himself in any street or public place or unenclosed land (other than in shop premises approved as such by a local authority) goes about in streets or public places or from premises to premises; or, b) By any of the means aforesaid carries on trade by the sale or exchange, or the offer or exposing for sale or exchange, of any goods, wares, merchandise or refreshments - But does not include a person who seeks or takes orders for subsequent delivery or who delivers goods, wares, merchandise or refreshments to premises for the purpose of resale (Local Government Act Cap. 265 of the Laws of Kenya).

Public Place: Includes any road, street, thoroughfare, foot pavement, footpath, sidewalk, lane, square, open space, garden, park or enclosed space vested in a local authority under the Local Government Act Cap. 265 of the Laws of Kenya.

Street: A highway, bridge, road lane, footway, courtyard, alley, square or passage or any lands reserved therefor, within the area of a local authority, used or intended to be used as a means of access to two or more premises or areas of land in different occupation, whether the public have a right of way over it or not, and includes all

channels, ditches, drains, sidewalks, bridges, culverts and other works appurtenant thereto (Streets Adoption Act Cap. 406 of the Laws of Kenya)

Public Road: All roads and thoroughfares reserved for public use (Public Roads and Roads of Access Act Cap 399 of the Laws of Kenya)

Negotiation: The process when two or more parties meet each other to get agreement over the use or distribution of a particular resource, the granting of a right etc. (ICC, 2007)

Collective Negotiation: Collective bargaining especially in worker organisations (ICC, 2007)

MSE Association: A group of MSEs registered for the purpose of accessing common services and mobilising resources for the development of the aforementioned enterprises (MSE Bill)

Umbrella (MSE) Organisation: An organisation of MSE associations (MSE Bill)

1. BACKGROUND

1.1. Introduction

On 13th August 2010, a Memorandum of Understanding (MoU) was entered between Nakuru Street Traders and Hawkers Association (NASTHA) and the Municipal Council of Nakuru (MCN). The heart of the MoU was establishment of a favourable working environment, with no arbitrary evictions, for street traders and hawkers operating within the Central Business District (CBD) of Nakuru District. Signing of the agreement marked the beginning of a new chapter in the relationship between the local authority, and the street traders and hawkers. This report is a case study documenting the process leading to signing of the partnership agreement between the two parties.

1.2. Nakuru Town: The Principal Urban Centre of Nakuru District

Nakuru District is in Kenya, to the north-west of Nairobi, Kenya's capital. It lies on the floor of the Great Rift Valley, between Longitude 35^o28' and 35^o36' East, and Latitude 0^o13' and 1^o10' South; and, covers an area about 1,484.1 Km² (NDDP, 2009).

The principal town of Nakuru District is Nakuru Town. This town is about 156 Km from Nairobi, at an elevation of 1,859 meters above sea level¹.

1.2.1. Core Urban Population of Nakuru Town

Nakuru Town's core urban population, as Table 1 shows, has steadily grown over the years such that, by the 2009 population and housing census results, the urban centre was third most populated urban centre in Kenya, after Nairobi and Mombasa.

Table 1: Principal Urban Centres of Kenya by Core Urban Population Census Results

Name	Status	Province	Core Urban Population as per census results of 24 th August				
			1969	1979	1989	1999	2009
1. Nairobi	City	NA	509,286	827,775	1,324,570	2,143,254	3,133,518
2. Mombasa	Mun	CO	247,073	341,148	461,753	665,018	915,101
3. Nakuru	Mun	RV	47,151	92,851	163,927	219,366	286,411
4. Kisumu	Mun	NY	32,431	152,643	192,733	194,390	259,258

Key: Mun – Municipality; NA – Nairobi; CO – Coast; RV – Rift Valley; NY – Nyanza

Sources: <http://www.citypopulation.de/Kenya.html>; KNBS₁ 2010

The 2009 census results are also informative: Nakuru's core urban population accounted for about 92.6% of the District's population; and persons aged 15 to 65 were estimated to be 63.7% of the District's population (KNBS₂ 2010; and, KNBS₁ 2010). The age group 15 to 65 is officially recognised in Kenya as the productive age.

Table 2: Nakuru District Population as Per 2009 Census Results

Age Group	Male	Female	Total
0-14	54,431	54,277	108,708
15-65	100,343	96,767	197,110
66+	1,682	1,755	3,437
Not Stated	109	60	169
Total	156,565	152,859	309,424

Source: KNBS₂ 2010

¹ <http://www.nakurumunicipal.or.ke/content/nakuru-municipality>

The District's core urban population trend is ascribed to external and internal migration in response to better physical infrastructure and industrial establishments, and proximity to the district and provincial headquarters. The external migration involves people moving from other districts, while internal migration involves movement of people from one division of the District to another (NDDP, 2009)

1.3. Economic Development of Nakuru

Agriculture and livestock, tourism, commerce, industry, mining, and tertiary services are the major economic sectors of Nakuru District. The agriculture and livestock sector is a major contributor to household income, whereby the sector's sectoral contribution to household income is estimated at 65% (NDDP, 2009).

On the District's tourism sector, this is steered by the Lake Nakuru National Park. The Park is a Ramsar Site, Bird Sanctuary, and UNESCO designated World Heritage Site; and it is popular with both local and international tourists.

On the commerce, industry and tertiary services sectors, a number of factors have played a vital role in determining these sectors significance to the District's economy, namely:

- a) Centrality of location of Nakuru District relative to regions within and outside the Rift Valley – which, at the industry, commercial and service levels, can be viewed in terms of market size;
- b) Nakuru District is linked to other towns within and outside the region by rail and road network;
- c) Nakuru Town is the administrative capital of the Rift Valley region as well as Nakuru District;
- d) Availability of raw materials from the surrounding agricultural hinterland; and,
- e) Availability of suitable land for industrial use.

In the recent past however, this advantage has been challenged. Urban level activities have slowly spread to previously agricultural areas surrounding the Town; and, due to the Government of Kenya's strategic policy interventions to cause improvement in all parts of Kenya, the District has to aggressively compete with other regions of Kenya for industrial investment.

1.3.1. Informal Commercial Sector of Nakuru Town

Nakuru Town has a large number as well as variety of informal street business activities, both stationary and mobile. For an appreciation of these activities, refer to Table 3 which is derived from an analysis of two lists of street traders and hawkers registered with, and made available by NASTHA. One of the lists provided to the study is a compilation of mobile and stationary street traders registered with NASTHA in November 2007. The other is a compilation of only mobile street traders registered with NASTHA by March this year (2012). Currently, NASTHA and MCN are carrying out a census of street traders and hawkers in Nakuru. Census and registration of the mobile street traders is complete. Census and registration of stationary street traders is to commence from mid July 2012 to mid August 2012. The

census and registration exercises are in part fulfilment of a MoU entered between the two parties.

Table 3: Products Traded by Mobile and Stationary Informal Street Traders of Nakuru

Type of Products Traded	No. of Street Traders Selling Type of Product by List Type - Date Traders Are Registered and Type of Registered Traders	
	November 2007 List	Feb to March 2012 List
Garments (either new, second hand or both)	301	13
Mali Mali	162	591
Shoes (either new, second hand or both)	115	1
Fruits	58	8
Soda	55	20
Cakes	41	6
Food - e.g. githeri (mixture of beans & maize), porridge	36	0
DVD/CD/VCDs	23	6
Sweets	22	149
Electronics	18	0
Tea	16	0
Hardware	15	0
Dressmaking	14	0
Bags	13	5
Shoe Shiner	12	0
Milk	10	0
Charcoal	10	0
Books/Publications/Stationery, Tomatoes, Herbs, Cereals, Vegetables, General merchant/ General Kiosk, Taxi Driver/driver/conductor, Cosmetics, Plumber, Caps/Hats, Socks, Rubber Stamps/Sign Writer, Simu ya Jamii, Spanned wool, Polythene papers, Tape, Bread, Snacks, Newspaper, Ball pens, Eggs, Belts, Net, Ropes, Cigarettes, Radio Repair, Cobbler/Shoe Repairer, Curio, Vicks, Sausages, Chicks/Chicken, Toys - second hand, Watches, hairdresser, Photographer, Painter, Potatoes, Soap, Necklaces, Juice, Sacks, Earrings, Tea Leaves, Cards, Groundnuts, Water, Ear phones, Biscuits, Lamps, Ties, Driving License Holder, Knife Sharpener, Ice Cream, Wallets, Miraa (Khat), Teddy Bears, Utensils, Tissue Paper, Samosas		
Total (count)	1023	922

Notes:

November 2007 List List contains both mobile and stationary traders registered with NASTHA in the year 2007

Feb to March 2012 List List contains only mobile traders registered with NASTHA in the year 2012. A list of stationary traders is yet to be developed – the census is planned to commence in mid-July 2012.

Commercial activities with a high concentration of street traders

Mali Mali “Mali” is a Swahili word meaning “wealth”. The term “Mali Mali” has been coined to describe the street trade where a trader vends an assortment of merchandise – (this street trader does not specialise in the products s/he sells).

Observable of the informal street business activities of Nakuru, they cut across trade, service, and manufacturing sectors. Chief is trade of products which are from a broad range of clusters such as: garments, shoes, toys, electronics, food and beverages, household goods, construction materials, stationery, artefacts, and fashion accessories. Service-related products are in human health, photography, shoe repair and polishing, watch repairs, plumbing, sign writing, transportation and, painting. Dressmaking is the most visible manufacturing activity.

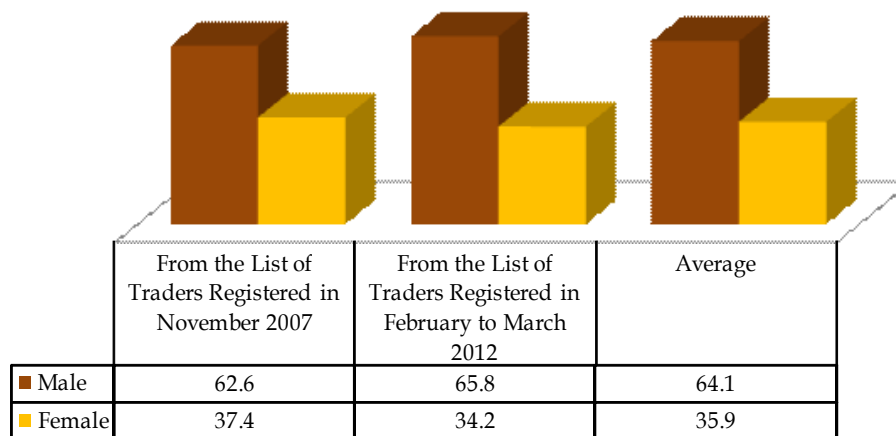
The informal street business activities are operated from residential, industrial, and CBD areas of Nakuru. The number, as Table 4 illustrates, is however highest in the CBD, where the main areas the stationary street traders operate from are Kenyatta Avenue and Club Lane; while for the mobile street traders the main areas are the public transportation nodes.

Further analysis of the two lists of street traders and hawkers provided by NASTHA reveal, as Figure 2 shows, there are more male than female street traders in Nakuru Town. Regarding age, as Figure 3 illustrates, the majority are below 40 years of age, i.e. between ages 19 and 39

Figure 1: New Shoe Vendor Located on Kenyatta Avenue - An Example of a Stationary Street Trader

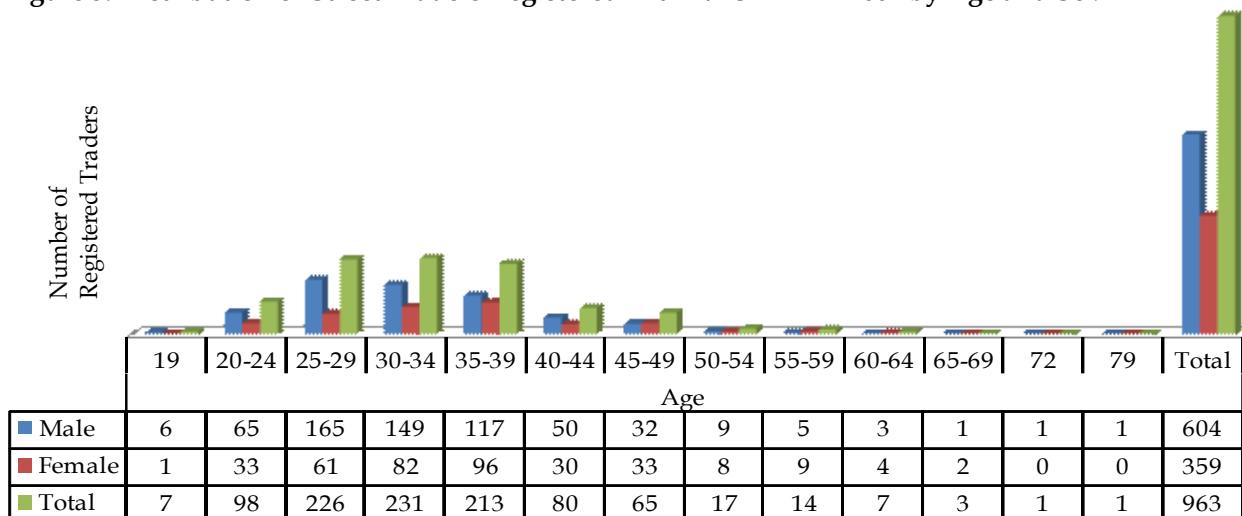


Figure 2: Distribution of Street Traders by Sex



Source: NASTHA[0]

Figure 3: Distribution of Street Traders Registered with NASTHA in 2007 by Age and Sex



Source: November 2007 List of Traders Registered with NASTHA

Table 4: Main Areas of Operation of the Stationery and Mobile Traders of Nakuru Town

Top Five Products Traded	Area of operation										Total
	Kenyatta Avenue	Stage	Club Lane	Kenyatta Lane Corridor	Town	Stage - Mololine	Stage - Mashambani	Stage - 2NK	Stage - 4NTE	Mobile	
FROM LIST TYPE: NOVEMBER 2007											
Garments (either new, second hand or both)	6	28	221	8							301
Mali Mali	28	109	0	0							162
Shoes (either new, second hand or both)	9	23	23	22							109
Fruits	1	20	1	3							58
Soda	1	51	1	0							55
Total number of traders (from the November 2007 list of registered traders) that mentioned trading in the area	73	341	274	42							945
FROM LIST TYPE: FEBRUARY TO MARCH 2012											
Mali Mali	24	371			92	4	16	0	3	58	576
Sweets	0	101			3	18	3	0	3	16	144
Sausages	0	14			4	0	0	0	0	3	21
Soda	0	10			1	2	1	1	1	4	20
Earrings	0	6			2	1	1	2	0	0	12
Biscuits	0	12			0	0	0	0	0	0	12
Garments (either new, second hand or both)	0	3			7	0	0	0	0	1	11
Total number of traders (from the February. to March 2012 list of registered traders) that mentioned trading in the area	26	537			131	26	25	3	7	91	856
Other areas of operation mentioned by street traders registered with NASTHA	Highway, Coffee House, Plutos, Woolmart, Seguton, Kaptembwa, Vickers, K.F.A Road, Langa Langa, Pandit Road, Gussi Road, Lion Garden, Town, Gikomba, Sokoni, Market, Oginga Odinga, Total, Supreme, Water Buck, Post Bank, East Road, Muthairi, Hospital Way, Murogi, Free Area, Kenlands, Teachers, Ravini Stage, West Road, Mbuni G, Road, Masai Road, Ngala, Mawanga, Shabab, Mobile, Industrial Area										

Source: Nakuru Street Traders and Hawkers Association

From MCN and NDDP (2008-2012), on the upside, the informal street business activities facilitate goods reaching the consumer. They also provide earnings to those not in formal employments; and, extra income to some who have other employment. Nakuru District has been experiencing a decline in wage (formal) employment trends. Industrial and other formal employments have been sluggish due to a slow growth of formal businesses. Also, from liberalisation of the economy, some industries were forced to decrease their labour force size to cope with the resulting competition. Further, agricultural produce has been receiving low prices. These dynamics are registered against a setting of increasing population and labour force.

The street business activities are in addition a source of revenue for MCN. They also play a role in the marketing chain of other sub-sectors through forward and backward linkages. As the MCN Budget Desk Officer/Local Authority Service Delivery Action Plan (LASDAP) put it, “there is a positive relationship between the street traders and the formal firms. The street traders, through the marketing chain,

Figure 4: Pedestrians, Street Traders and Vehicles on Club Lane Road, which is within the CBD of Nakuru



Note: The DMS&ED played the key role in negotiating the Club Lane Road workspace for the street traders to operate from

market the formal firms’ products. They advertise products at no cost. In return, the formal firms give discounts to these street traders”.

A downside of the street business activity is their proliferation leading to congestion of the CBD. This slows pedestrian movement, is perceived as causing inconvenience to customers to the CBD, and triggers off the displeasure of formal businesses trading within the CBD as well as government agents whose duty is security enforcement. This downside is explained by a lack of formal space for the street traders’ to carry out their activities.

1.4. Key Government Agencies with a Role to Play as Regards Street Traders in Nakuru

1.4.1. Municipal Council of Nakuru: Its Establishment, Powers, Duties and Functions

a) Establishment of Local Authorities in Kenya

Local authorities in Kenya are established by the Local Government Act Cap 265 of the Laws of Kenya, which stands repealed after the general elections under the Constitution of Kenya (2010), when the Urban Areas and Cities Act 2011 takes effect. Through Cap 265, five types of local authorities can be established in Kenya. In decreasing order of status, these are: City, Municipal, Town, Urban, and County councils respectively. However, markedly active in the country are four types of local authorities: City, Municipality, Town and County councils. The City, Municipality and Town councils have authority over urban areas, and are thus

referred to as urban authorities. All other land not under the control of these urban authorities, which essentially is rural in nature, is governed by County councils. Worth noting of the established local authorities in Kenya, by and large, they derive their names from the principal centre in their area of jurisdiction.

By Cap 265, established in Kenya are 175 local authorities, distributed as Table 5 shows.

Table 5: Types and Number of Local Authorities in Kenya

Type of Local Authority	Total Number in Kenya
City Councils	1
Municipal Councils	45
County Councils	67
Town Councils	62
Total	175
Source: Mboga, 2009	

b) Power, Duties and Functions of Local Authorities in Kenya

The Local Authority Act Cap 265 empowers Local Authorities in Kenya with certain powers, duties, provisions and functions. Of relevance to this report are those contained in:

- a. Part XI, Sections 163 to 166: powers to control trade and occupations; application for licences; powers to refuse to grant or renew licences and to cancel licences; and, planning. For the full contents of this Section, see Annex 1.
- b. Part XIV: powers to make by-laws from time to time in respect of all such matters as are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants of its area of control. For the full contents of this Section, please refer to Annex 2.

c) Municipal Council of Nakuru

Nakuru District has two local authorities, namely: MCN and County Council of Nakuru (NDDP, 2009). Nakuru Town is under the control of MCN. MCN gained its Municipality status in the year 1952. Currently, the Municipality covers an area of 290 Km², of which Nakuru Town takes 102 Km². The rest, 188 Km², is under the Lake Nakuru National Park².

MCN has seven policy making committees where routine and development issues are deliberated and resolutions ratified during main council meetings held once within every period of three months. These committees, which correspond to the departments of the Local Authority are: a) Finance, Staff and General Purposes; b) Education; c) Town Planning and Works; d) Environment; e) Public Health; f) Social Services and Housing; g) Internal Audit; and, h) Water and Sewerage.

Additionally, MCN has a strategic structure plan, whose implementation commenced in the year 2000. Noteworthy of the strategic structure plan, the development challenge of street traders and hawkers is incorporated. With respect, it is part of the Local Authority's efforts of humanely decongesting the CBD, not through forceful and arbitrary evictions, but thoughtful planning, such that Nakuru's development potential is strengthened. According to the Local Authority, its efforts are toward ensuring the Municipality is a reasonable place for all to live in the future. Examples of the Local Authority's efforts vis-à-vis developing the

² <http://www.nakurumunicipal.or.ke/content/nakuru-municipality>

potential of the street traders and hawkers include: i) Construction of a wholesale “Wakulima” Shopping Complex; ii) Construction of a modern four-floor building business complex at “Mashambani” Stage; and, iii) Promotion of the informal sector, undertaken toward alleviating poverty levels (*ibid*; MCN, 1999).

1.4.2. Other Government Agencies

Besides the Local Authorities, there are other government agencies with a role in respect of street traders and hawkers in Kenya. These are:

a) Ministry of Trade: This Ministry is responsible for the promotion of trade domestically, regionally and internationally through creation of an enabling business and investment environment. The Ministry describes the trade sector as crucial toward attainment of national development objectives, and realisation of Millennium Development Goals (MDGs) one and eight on eradication of Extreme Poverty, and Development of Global Partnership for Development through Improved Market Access respectively (<http://www.trade.go.ke/>);

b) Ministry of Youth Affairs and Sports: Besides sports, this Ministry addresses youth concerns in the country. It was grounded on the realisation that the Government may not achieve the UN MDGs without adequately dealing with the many socio-economic challenges facing the Kenyan youth. According to the Ministry, the political and social turmoil of the 1990s left scars that today are being borne disproportionately by young people, whom it describes as persons between the ages of 15 and 30 years old. This group of people, in particular females, suffer high unemployment rates. In the Ministry, spearheading the development of youth is the Department of Youth Development. This Department handles youth issues which are grouped into 10 strategic themes. Two that are particularly relevant to the subject under discussion are: i) Youth and Employment; and, ii) Youth Empowerment and Participation (<http://www.youthaffairs.go.ke/>);

c) Ministry of Industrialisation: This Ministry’s mandate is to provide the policy framework and the enabling environment for players in the industrial sector to create wealth and employment, and especially to tap the potentials and talents of the large pool of the Kenyan youth. Basically, the Ministry is faced with the challenge of ensuring that as many people as possible contribute positively to the country’s economy, either as employers in the manufacturing sector or as employees (MoI, 2008);

d) Ministry of Cooperative Development and Marketing: The significance of this ministry to street traders is with regard to savings and credit facilities when in an association. Overall, the mandate of the Ministry includes cooperative: legislation and policy formulation and implementation; registration; extension services; education and training; and, marketing³;

e) Ministry of Gender, Children and Social Development: The key mandate of this Ministry is to provide the policy framework and enabling environment for gender, children and social development in the country. With respect, one important aspect worth mentioning of this Ministry is registration of Self Help Groups (SHGs), also

³ http://www.cooperative.go.ke/index.php?option=com_content&view=article&id=107&Itemid=80

referred to as Community Based Organisations (CBOs). This is relevant for our purposes because street traders could come together to form a SHG to represent their interests. A SHG is an assemblage of members whose aim is to pool resources for social welfare and socio-economic development. The members to a SHG can either be individuals or registered SHGs. For a SHG made up of individuals to be registered with the Ministry, which is done through the Department of Gender and Social Services, it must meet certain requirements, namely:

- i) It has 15 or more individuals;
- ii) It has filled all the applicable self help application forms;
- iii) It has a Constitution;
- iv) It has minutes of the group's meeting indicating elected officials, and decision to register;
- v) It has a list of all group members, their National Identification Number and signatures; and,
- vi) Pay a registration fee of Ksh. 1000.

For an amalgamation of registered SHGs to be registered with the Ministry, the requirements include: a) fulfilling all the SHG registration requirements; and, b) payment of Ksh. 5000 as registration fee.

Generally, members of a SHG are confined to a defined geographical area, e.g. Location, Division and District⁴; and,

f) The Ministry of Labour - in specific the Department of Micro and Small Enterprise Development (DMSED): The DMSED is the Government of Kenya's agency that puts MSE activities in one place to improve coordination and implementation of the activities. It is responsible for formulation of policies and coordination of implementation strategies for the development of MSE sector in the country. Its range of services include: a) promotion of access to markets and marketing information for MSE products; b) capacity building of MSE Associations and Savings and Credit Cooperative Societies; and, c) resolutions of conflicts within the MSE Associations. However, according to the Department, several factors have hampered its capacity to facilitate the MSE sector's development, namely: i) unfavourable policy environment; ii) poor coordination as some of the activities are still scattered in other ministries/departments; iii) weak monitoring and technical skills; and, iv) persistent leadership wrangles⁵.

All these ministries are established by individual Acts of Parliament of the Republic of Kenya. Each Ministry's Act defines the Ministry's establishment and functions. Noteworthy of all the ministries identified in this report as having a role on street trading and the issue under discussion, and MSEs in general, according to the

⁴ <http://www.gender.go.ke/index.php/About-Us/ministrys-madate.html>
<http://www.gender.go.ke/index.php/Gender-and-Social-Development/frequently-asked-questions-faqs.html>

⁵ http://www.labour.go.ke/dmsed/index.php?option=com_content&view=article&id=61:background&catid=40:about-us

Nakuru County Enterprise Development Office, "there is no clear demarcation this ministry should go this far, and the other takes from here. There are areas where they overlap, and others missing (i.e. gaps where no ministry claims anything and yet it is a need that requires addressing)".

Also noteworthy, several government agencies can register MSE associations, consequently presenting another challenge to improve coordination and implementation of MSE activities. A MSE association can be registered as:

- i. A non-profit company (company limited by guarantee) under the Companies Act (Cap 486) 1959, with the Registrar of Societies, State Law Office (Office of the Attorney General)
- ii. A society under section 10 of the Societies Act (Cap 108) 1968, with the Registrar of Societies, State Law Office (Office of the Attorney General)
- iii. A trust under the Trustees (Perpetual Success) Act 1982, with the Ministry of Lands;
- iv. A Non-Governmental Organisation (NGO) under the NGO Coordination Act 1990, with the NGO Coordination Board, Ministry of State for National Heritage;
- v. A cooperative under the Cooperative Societies Act Cap 490, with the Ministry of Cooperative Development and Marketing; and,
- vi. A CBO with the Department of Gender and Social Services, Ministry of Gender, Children and Social Development

Choice of registration type is influenced by the association's objective(s) that may include: nature of public benefit(s) it intends to offer; ease of entry and exit; and, access to technical and financial support offered by a specific agency which requires the association be registered under a particular regime. Registration as a CBO is the lowest form of registration, and it is relatively easier to register a CBO than the others. In addition, the geographical coverage of a CBO is frequently localised, usually not beyond divisional level. Conversely, a society, for example, has a generalised geographical area of coverage that may include nationwide.

1.4.3. The Micro and Small Enterprise (MSE) Bill

Appropriate at this point is to introduce the MSE Bill. This Bill, when enacted, would be a new law providing the legal and institutional framework for the promotion, development and regulation of MSEs in Kenya. The process toward development of this Bill commenced in the year 2000, spearheaded by the Ministry of Labour, and with technical backup provided by the Kenya Institute for Public Policy Research and Analysis (KIPPRA). In 2009, it was taken to Parliament for debate.

The Ministry of Labour has sent the Bill to Cabinet for approval. On looking at it, however, the Cabinet recommended, for it to approve the Bill, it must be signed by three Ministries, namely: Ministries of Finance, Labour, and Trade. At this point, the Bill hit a snag. The Ministry of Trade held the opinion it should spearhead the process; while the Ministry of Finance raised queries over certain issues, e.g. on MSE funds.

This Bill, among other issues, is: a) introducing order to the registration of MSE associations; b) introducing how disputes in the sector would be settled; and, c) tackling the challenge of worksites as regards MSEs.

On this hitch occasioned by the three ministries positions, the private sector introduced another way to see the process to conclusion. Kenya Private Sector Alliance (KEPSA) approached a Member of Parliament to introduce the Bill in Parliament as a private members Bill⁶. As a private members Bill, it has gone through the first reading, and is yet to be debated. Delay in debating the bill could be due to the Parliament's busy schedule.

1.5. Other Agencies of Relevance to this Report

1.5.1. The Provincial Administration

The Provincial Administration, a Government of Kenya agency, is under the Ministry of State for Provincial Administration and Internal Security. This Ministry is charged with the responsibility of public administration, internal security, printing of Government documents, and championing campaign against drug and substance abuse.

The Provincial Administration is composed of the following offices, in decreasing order of tier: Province, headed by a Provincial Commissioner (PC); District headed by a District Commissioner (DC); Division headed by District Officer (DO); Location headed by a Chief; and, Sub-Location headed by an Assistant Chief. A province is made up of several districts; a district, several locations; and, within a location several sub-locations⁷.

1.5.2. Nakuru Street Traders and Hawkers Association

Nakuru Street Traders and Hawkers Association is an urban alliance of street traders and hawkers operating in Nakuru District. The MSE Association was registered by the Registrar of Societies in 2003 and, on 15th August 2006, was issued a certificate of registration. Notable, is a three year delay between registering and getting a registration certificate. This was due to interference by politicians, who felt threatened by the traders being organised. This resulted in the Catholic Diocese of Nakuru intervening on behalf of the traders, to cause getting of the registration certificate.

NASTHA's mission is to organise and empower street traders and hawkers in Nakuru District in order to improve their business. This it achieves through training, access to credit, and dialogue with local authority and relevant organisations on appropriate by-laws and policies that give recognition to and bring to an end harassment and discrimination against street traders and hawkers. The Association's

⁶ The Micro and Small Enterprise Bill, 2011. 2011. Kenya Gazette Supplement No. 135 (Bills No. 55), Government Printer, Nairobi

⁷

http://www.provincialadministration.go.ke/index.php?option=com_content&view=article&id=1&Itemid=2

overall vision is to transform street trading and hawking into corporate establishments.

Street traders and hawkers are registered with NASTHA through their respective traders CBOs (associations). At present, registered with NASTHA are 17 CBOs, through which the number of street traders and hawkers affiliated to NASTHA is slightly over 1200. This number is expected to rise by end of year 2012. Over 15 registered traders CBOs, commanding over 1500 individual members, have expressed interest in joining NASTHA.

Worth noting at this level, NASTHA is a very useful source of data on street traders and hawkers in Nakuru District, namely: a) number of traders by product traded, age, sex and area of operation; and, b) challenges faced and their most appropriate solutions. This has earned it high recognition from relevant government agencies, particularly the MCN, and the Nakuru County DMSSED of the Ministry of Labour. According to the MCN and Nakuru County DMSSED Office, the data has been very useful in their respective planning activities. As a result, they have been active “cheer leaders” of the Association, highly recommending unregistered street traders and hawkers approaching their offices to register with the association.

NASTHA is a member of Kenya National Alliance of Street Vendors and Informal Traders (KENASVIT), an umbrella organisation of local urban street traders and hawkers associations. Presently thirteen local urban associations are registered members of KENASVIT. These are from the following towns: Machakos, Mombasa, Nairobi, Nakuru, Migori, Kisumu, Busia, Kakamega, Kitale, Nyeri, Eldoret, Kisii, and Keroka. This year Thika, Embu, Bondo and Makueni will be recruited.

NASTHA’s vision and mission are adapted from KENASVIT’s vision and mission. For KENASVIT’s organogram, refer to Annex 5.

1.5.3. Nakuru Business Association

Nakuru Business Association, registered as a society under the Society’s Act Cap 108 of the Laws of Kenya on 7th April 2004, is a non-political, non-racial, non-religious, broad-based business network. Its membership is drawn from leading formal companies, business, professional and occupational bodies within Nakuru Town and its environs. Its activities include: a) business advocacy aimed at influencing the development and implementation of public policies that affect businesses in Nakuru; b) working with the community to protect the environment; c) organising and

Group Name	No. of Members
1. Kenyatta Avenue	300
2. Club Line	240
3. Thaikira	47
4. Gikomba	13
5. Mascan Seed SHG	15
6. Shamba la Mawe	41
7. Gukinya	61
8. Lions Garden	22
9. Gilani	16
10. Kujilea Group	11
11. Victory Waste Collector & Pickers	31
12. Nakuru Street Vendors	44
13. East Road Mashambani	214
14. Victory Baraka	43
15. Royal Disabled	28
16. Nakuru Genuine Hawkers	48
17. Nakuru Stage Hawkers	52
Total	1226

hosting seminars and workshops to discuss current issues; d) facilitating international ties that enhance trade in Nakuru; e) coordinating events for its members; f) cooperating with other stakeholder organisations to enhance business opportunities; and, g) representing the business community in different town activities (www.nba.co.ke).

2. THE BARGAINING ACTION

2.1. Description of the Problem

2.2. Year 2000 to 2002

From NASTHA, the start of serious bargaining action between MCN and the street traders and hawkers of Nakuru can be traced to the year 2000. At this time, the Association reported it was very tough. Two major government agencies were against the street traders and hawkers operating from the CBD. These were MCN and the Provincial Administration. The two joined forces to become a formidable force against these informal traders. In the mornings, the informal traders would wake up to confrontations with the Administration Police Officers (APs) and Council Askaris. The two government agencies were determined to get the informal traders off the CBD; and the informal traders were determined to 'struggle' for space in the CBD.

The street traders and hawkers understood they could not engage the two forces simultaneously. They therefore organised themselves and strategised to begin the 'struggle' with the Local Authority. In the Local Authority, they began with the Councillors. In MCN there exists a municipal council established under PART III of the Local Authority Act Cap 265 of the Laws of Kenya. The municipal council comprises a mix of elected and nominated Councillors.

The bargaining power the traders had over the Councillors was that they would vote the elected councillors out in the next national election if they did not address their plight. Significant to note is that the traders form a considerable voting bloc in Nakuru Town Constituency (which is synonymous with Nakuru District); and, reportedly, politicians court them near the general elections. From this knowledge, the Councillors informed the Provincial Administration the Municipal Council had pulled out from forceful eviction of the traders from the CBD. Out of this, the Council Askaris were withdrawn, and only left to harass the traders were the APs.

For a month, which was in the year 2001, the traders engaged with the APs. What happened then, the APs would confiscate the traders' wares; the traders would go to the PC's office to pay a fine of Ksh. 200 to get back their wares; and, the traders would go back to business. And the circle would begin again. After the month, the traders thought the next best move would be to demonstrate. Before they could demonstrate, the PC called the traders representatives to a meeting where it was agreed the traders would trade within the CBD but under certain conditions, such as avoiding trading in front of established firms and general obstruction. This agreement was verbal. The traders continued to trade in the CBD but ignored the agreed upon conditions.

In 2002, when the informal traders thought the Councillors were 'with them', they discovered otherwise. These councillors would send Council Askaris to arrest the informal traders; then be at the forefront in agitating for the release of the traders. This way, the plot was to get the informal traders to elect them in the coming national elections, which were to be held in December 2002. Prior to the national elections, the informal traders were not aware of this strategy between the enforcement officers and Councillors. They got to find out about it after the elections, after they had elected the Councillors back into office. The scheme was revealed to the informal traders by some Council Askaris. From this chronology of events, the strong determination of the traders to universally join forces and speak as one was rooted.

2.3. Year 2003

In October 2003, street traders, through their SHG leaders, elected two representatives to attend a conference in Nairobi, organised by the Institute for Development Studies - University of Nairobi (IDS-UoN) and StreetNet International. At the forum, it was resolved to form a national alliance of street vendors and informal traders in Kenya. The two representatives, Ms. Magdalene Mbithe and Mr. Simon Sangale Ole Nasieku, on going back to Nakuru, organised a forum which was attended by 17 Nakuru-based street traders SHG leaders. This group passed a resolution to form an umbrella organisation of street traders in Nakuru. The leaders met later on, wrote the constitution, and elected office bearers. Thereafter, they applied to the Registrar of Societies to register their umbrella organisation under the name Nakuru Street Traders and Hawkers Association.

Still in 2003, the street traders pushed on with their agenda with the Mayor of MCN. The Local Authority continued to harass the traders. The harassment this time round was in the following form: The street traders paid a daily fee to the Council to be allowed to operate for the day. By paying the daily fee, it made the street traders vulnerable in the sense that his/her work station position was not permanent. Anyone could claim that position come the following day.

2.4. Year 2004

In 2004, elections to select a new Mayor were held. The traders played a critical role in the elections. Under the Local Authorities Act, Mayors of Municipalities are elected from among Councillors, by the Councillors. One of the Councillors that wanted to be elected the new Mayor of MCN used to talk to these traders to understand their challenges and how best to resolve them. The traders were happy with this Councillor's approach. Near and on the election date for a new Mayor, they mobilised themselves to influence the election in favour of this Councillor. This they did by lobbying other Councillors.

The new Mayor, on being elected, initiated dialogue between MCN and the street traders and hawkers. Out of the dialogue: a) Harassment of the traders by MCN was stopped; b) Payment of monthly fees was introduced, which ensured a street trader's operating space was secured for the month; and, c) A Public Relations Office was introduced. Through this Public Relations Office, the traders channelled their

concerns to the Local Authority. Of note, all these negotiation points were via a gentleman's agreement. There was no written agreement signed by both parties.

2.5. Year 2006 to 2008

In August 2006, a new Mayor was elected. On this Mayor's election, harassment of the street traders and hawkers began again. The Local Authority wanted the street traders and hawkers out of Kenyatta Avenue.

This new Mayor was in office for one year before the national elections, which were held in December 2007. The harassment of the traders continued for this one year. Their wares would be confiscated and only released upon payment of a fine. For the most part, the fine would end up in the pockets of the Council Askaris.

In 2008, a new Mayor was elected. The harassment to the traders was minimised.

2.6. Year 2009 to 2010

In 2009, MCN got a new Town Clerk. This Town Clerk wanted the street traders and hawkers out of the CBD, without giving an alternative worksite to operate from. The "cat and mouse" game between the MCN and street traders and hawkers began again.

On 1st June 2010, a public holiday in Kenya that marks Madaraka Day celebrations, the PC for Rift Valley Province, (while presiding over the celebrations in Nakuru in Old Town Hall and in the presence of the Mayor, Councillors and other leaders), made an announcement to the effect that all street traders and hawkers trading in the CBD should be evicted. By the time of the PC's announcement, the number of street traders and hawkers in Nakuru District had increased. The increase was occasioned by the presence of Internally Displaced Persons (IDPs) resulting from the Post Election Violence (PEV) after the announcement of presidential election results on 30th December 2007. The

Nakuru Hawkers Threatened with Eviction from Town

Hawkers and small traders in Nakuru are facing imminent eviction from the Central Business District (CBD) even as the government grapples with the unemployment facing the youth. Living standards have drastically spiralled up resulting from inflation yet the government could only afford a paltry Ksh. 700 increment for a few who have been lucky to secure jobs.

Contradictions over the expulsion of hawkers from the Nakuru town centre have emerged with Nakuru Town MP Lee Kinyanjui and Nakuru Municipal Council Clerk Sheikh Abdullahi Yusuf issuing conflicting statements. The Clerk, two weeks ago, issued a notice that requires all hawkers and small traders trading in the town centre to vacate as they wait to be relocated to a yet to be constructed modern trading complex outside the CBD.

During a recent workshop at Waterbuck Hotel in Nakuru which Kinyanjui attended, he said the hawkers should remain in the CBD as long as the trading complex is not yet available. He told the hawkers' chairperson Simon ole Nasieku that the decision was reached after consultations with authorities responsible for the business of the Town.

"I don't know what you might have been told, but what I tell you is that I did consult and here confirm to you that you will in the mean time remain trading in your respective places until the shopping complex is constructed", said Kinyanjui.

Ole Nasieku however expressed the hawkers' objection, saying the market planned to be constructed in Oginga Odinga Avenue will make their regular customers elusive. "Our regular customers are people working in the CBD who will not hire a motorbike for Ksh. 100 to get out of town centre to buy a commodity of Ksh. 70 on Oginga Odinga Avenue," argued ole Nasieku.

Source: *Article by Gichana Amos, writing for the Sunday Express, May 10 - May 16, 2009 (page 4)*

IDPs were from some areas of Nakuru Town, and other parts of the Rift Valley. These IDPs were settled in three main camps in Nakuru District, namely: Afraha Stadium grounds, Agricultural Show of Kenya (ASK) grounds, and Pipeline grounds. The combined number of IDPs settled in these camps was estimated at 20,000 individuals. Some of the IDPs were traders in their original place of residence, prior to the PEV⁸.

NASTHA assisted willing IDPs by getting them spaces within the CBD to trade from, so that they would earn a livelihood to support themselves and their families. These IDPs initially would approach the MCN to request for space within the CBD to operate from, and the MCN would refer them to NASTHA.

Presently, according to NASTHA, only IDPs from Afraha Stadium and ASK grounds have been resettled. These constituted about 70% of IDPs from the three main camps mentioned. However, among these, there are individuals who have chosen to continue with the informal trade they engaged in prior to resettlement. These are mainly in the youth age group. Their parents are the ones that have gone to settle on the land allocated by the Government of Kenya.

IDPs from the Pipeline Camp are yet to be resettled. During the day, informal traders from this camp venture to the CBD to earn their livelihood, and return to their camps come evening.

Besides the increase in number of the informal traders in the CBD, two other issues may have influenced the PC to make the aforementioned announcement:

a) Pressure from the formal business community. This community has some significant influence because, according to NASTHA, they sponsor politicians to run their campaigns; and,

b) Nakuru District was in the immediate future to host national and regional events. The national event was the Kenya Inter-Municipality Sports and Cultural Association games to be attended by all 175 local authorities in Kenya; while the

Street hawkers in protest over eviction plan ahead of games

Small scale traders have protested against an alleged attempt by the provincial administration to evict them from Nakuru streets during civic authorities games to be held in the town next month. The move is aimed at "ridding the town of a bad image" when all the 175 municipal, county and town councils converge for the "KIMSCA".....

...Nakuru Town MP..., who was a guest speaker during a human rights workshop....promised to intervene on the matter, saying ... "Somebody cannot just wake up one day and decide to evict hawkers to please visitors. They must have an alternative solution".

He noted the Ministry of Local Government had allocated money for the construction of markets and sheds for informal sector operators and wondered why the NMC had not addressed the plight of hawkers in advance before the games were held.

Source: *Article by Nation Correspondent, writing for the Daily Nation, Wednesday, July 14th, 2010 (page III)*

⁸

http://www.marsgroupkenya.org/Reports/Government/2008/10/Waki_Chapters/Chapter_7_Internally_displaced_persons.pdf

Kenya Post Election Emergency Response Inter-Cluster Progress Report 4 - 31.01.2008 (<http://ochaonline.un.org/kenya>; www.logcluster.org/kenya; www.reliefweb.int)

regional event was the East African School Games. The Provincial Administration was fearful of the image the large number of informal traders would present to the visitors to Nakuru. In addition, it worried about the security of the visitors.

2.7. Pre-Negotiation Period: 2nd June to 9th August 2010

The announcement created fear amongst the informal traders. They worried, should the eviction order be executed, they would have no other source of livelihood; and thus poverty in the District would be perpetuated.

The announcement in addition re-energised NASTHA to action. Through its Chairperson, Mr. Simon Sangale Ole Nasieku, NASTHA called for a peaceful demonstration. It also started to lobby Councillors, as well as the area Member of Parliament (MP), Hon. Lee Kinyanjui. As noted under section 2.1.1, the traders form a considerable voting bloc in Nakuru Constituency. Therefore, the announcement by the PC may have put these politicians in an uncomfortable position. Its acceptance by the politicians meant them losing this significant voting bloc.

The politicians started voicing their opposition to the eviction order, which resulted to the called-for peaceful demonstration not taking place. The politicians' support was good for the traders as it provided reasonable leverage in the traders' quest toward foiling the eviction order. However, the traders were wary of the politicians. They understood from past experience the politicians' interest was votes, and thereafter did little in the interest of the traders. They also noted the politicians' opposition was more visible in the form of issuance of public statements. Through the public statements, the politicians voiced their support for a constructive solution. NASTHA was of the opinion these public statements were not binding. Needed from MCN was a more binding commitment. Preferred by NASTHA was a written and signed agreement that they can present to a court of law should, in the future, MCN backtrack on its agreement or the Provincial Administration forcefully enforce their eviction order.

It is worth noting at this point, NASTHA also applied certain tactics that appreciably influenced the change of attitude of MCN, persuading the MCN to listen to the traders through NASTHA. Immediately after the announcement by the PC, the traders commenced with gathering evidence of professional misconduct in MCN. The evidence was from an insider sympathetic to the traders. This evidence would be sent to the Minister of Local Government, and the main state anti-corruption agency. Other recipients of the evidence were print and audio media. This initiated investigations on corruption within the Local Authority. Additionally, it got the full attention of the Minister of Local Government

This was, however, not a smooth undertaking. Threats to NASTHA Chairperson's life were one of the results. The Criminal Investigation Department had to come to the aid of the Chairperson. It warned those suspected to be issuing the threats that it was aware of the threats.

Another government agency that reacted to the PC's announcement was the District Peace Coordinator (DPC) Office. This office advised against execution of the eviction order. According to the office:

As a peace office, the DPC monitors conflict triggers through early warning. The early warning in this situation was that the moment you start touching negatively on the street traders, it will initiate chaos. This is not good for the economy.

The role of the peace monitor is, on behalf of the government, to reduce conflict in all areas and also to support dialogue in resolving issues. It comes in and lets them know, it is important to recognise a dispute is a dispute; and, if constructive alternative ways are not explored and the best implemented, the alternative is to perpetuate crime and corruption.

We cannot be successful in peace unless it is inclusive, hence the argument for including the informal traders. These traders, if uncoordinated, can become a source of social conflict. Before the negotiation, the traders were everywhere and were contravening the Council by-laws. For example, parking in the CBD and controlling criminal activities were very trying. This was a concern. There was need to bring order to this. The institution responsible for bringing the order is the Council. Source: Interview held with the DPC on 21st May 2012

On 14th July 2010, a Daily Nation newspaper article reported, "Small-scale traders on the streets of Nakuru Town will not be evicted. Nakuru Central [District Commissioner] DC Kang'ethe Thuku assured them that they would only be removed once an alternative site was found. There was anxiety among the traders when word went round that the Municipal Council wanted to evict them with the assistance of the Provincial Security Committee by next month..."

2.8. Negotiation Period: 10th to 12th August 2010

On 10th August 2010, the Town Clerk of MCN called for a meeting between NASTHA and the Local Authority. The meeting was attended by the Town Clerk, Mayor, Municipal Treasurer, and Chairperson of NASTHA. In the meeting the MCN officials informed NASTHA they were under pressure from the Provincial Administration to evict the traders from the streets prior to the games. The MCN team presented various proposals for solving the stalemate between the MCN and the traders, including relocation to the outskirts of the CBD. They also sought alternative proposals from NASTHA, in response to which the NASTHA's Chairperson gave proposals on maintaining the informal traders in the CBD, but under certain conditions which he persuaded the MCN team to view as beneficial to both parties. NASTHA's Chairperson's proposals were more acceptable to the audience. NASTHA, through the Chairperson, additionally wanted the agreed-upon points be in the form of a written agreement and signed by representatives from both sides. This was intended to protect the street traders as discussed under Section 2.2. above.

In conclusion, the MCN team requested NASTHA to draft a Memorandum of Understanding (MoU), incorporating the agreed-upon points, and to present the draft to the Town Clerk before end of day on 11th August 2010 for their comments; and, on 12th August 2010, the negotiation team would meet to ratify the contents of the MoU.

On the night of 10th August 2010, the Chairperson of NASTHA drafted the MoU; and on 11th August 2010, he held an extraordinary meeting with some members of NASTHA. He tabled to this group of NASTHA members the draft MoU for

discussion, and the issues he had highlighted were agreed upon unanimously without amendments or additions. The issues were on the KIMSCA games, worksite cleanliness, eviction of street traders, reduction of permit fees, decongestion of the CBD, street lighting, census of hawkers, and formation of a development market committee. This NASTHA team endorsed the Chairperson to forward the draft MoU to the MCN Town Clerk, Sheikh Abdullahi (NASTHA Minutes of 11th August 2010 – refer to Annex 5 for the contents of the Minutes).

No other institutions and persons were involved in the negotiation. The negotiating partners were wary of political interference, that they may hijack the process to result in an undesirable outcome. The other institutions they were wary of were the provincial administration and the established business community. These have been against the traders operating from the CBD.

2.9. Signing of the MoU between MCN and NASTHA: 13th August 2010

On 12th August 2010, the Town Clerk sent out letters to His Worship the Mayor of Nakuru Municipality, Municipal Council, Director of Social Services and Housing in MCN, area Councillor and NASTHA members inviting them to a breakfast meeting to be held on Friday 13th August, 2010 at 8:30 a.m. at the Old Town Hall. The letter read “We wish to meet with Committees of Street Vendors/Hawkers representing informal traders operating in various streets, roads and lanes within the Central Business District, Nakuru Municipality. The Agenda will be tabled. Kindly comply. Yours faithfully, A.S Abdullahi, Town Clerk”.

On 13th August 2010, the MoU between MCN and NASTHA was signed. From the attendance list, over 200 members of NASTHA witnessed the event. The event was in addition reported in the daily newspapers on 14th August 2010. Annex 6 gives the contents of the MoU.

Figure 5: Signing of the MoU between MCN and NASTHA



Left: His Worship the Mayor of Nakuru Municipality, John Kitilit, showing the signed MoU between MCN and NASTHA. This was during the signing ceremony held on 13th August 2010.

Right: Some of the street traders that attended the signing ceremony

2.10. Key Negotiation Points

1. Revenue: The Municipal Treasurer attached particular importance to the process due to the financial implication of the negotiation. Ensuring compliance with

payment of market fees by the traders was a tall challenge for the Council. Up to this time the Council was charging the traders a blanket fee of Ksh. 360 per month. This was considered steep by the mobile traders. As a result, the Council was losing in revenue as the mobile traders worked hard to evade paying the levy. To facilitate this group of traders' compliance with the Council by-laws, NASTHA proposed reducing the fee to Ksh. 200. The Council also wanted to adjust the stationary traders' fee from Ksh. 360 to Ksh. 660, but NASTHA argued for Ksh. 360.

2. Census of street traders: A census of street traders was to be undertaken. This would create a database which would assist in increasing revenue to the Council, issuance of identity cards that would prevent harassment from Council Askaris, and allocation of stalls on completion of construction of the Wakulima Market. Traders in the database will be given first priority in allocation of the stalls. This is to check irregular allocation of stalls to especially politically connected individuals.

3. Cleanliness: The traders are to have containers to dispose of the waste generated by their business. They are also to ensure they clean up their work station before retiring for the day to their homes.

4. Decongestion of the CBD: Stationary street traders are to reduce the length of their tables to 3ft off the wall, to facilitate pedestrian movement on the streets.

5. Operation within the CBD: This is a temporary situation. According to MCN, the only reason it is allowing the traders into the CBD is because they currently have nowhere else to go. Construction of Wakulima Market is toward solving this problem of work space.

Figure 6: Decongestion of the CBD - Ease of Movement of Pedestrians in the Streets Facilitated by the Agreement



3. ACHIEVEMENTS AND LESSONS LEARNT

3.1. Achievements: What Has and What Has Not Been Achieved

The Municipality of Nakuru is better off today, than prior to the signing of the MoU. Following are the reasons why. These are given by respondents.

1. Compliance with Council By-laws has improved. Any trader going against the By-laws is reported to NASTHA for disciplinary measures. The Association can even recommend stricter measures such as revocation of licenses. This has worked out better for the Council.

2. The Council and DMSSED each have a list of genuine street traders. Any new trader wishing to be issued with a permit by the Council, or who approaches the DMSSED for business development service assistance is requested by these two offices to first pass through NASTHA for vetting and introduction to the respective offices.

3. The relationship between MCN and the street traders has improved. Examples given to demonstrate this are as follows:

a. The Council has planted trees along some streets. Traders operating along these streets are taking care of the trees.

b. There is increased trust between the Council and street traders; and, the Council does not want this trust interfered with, but enhanced. This is because it understands the traders cannot be wished away; they are part of MCN society.

4. MCN savings have increased:

a. First, the negotiation has enhanced the Council's efforts in revenue collection from amongst the street traders. The traders are paying the Council fee without being coerced. This has positively affected the budgeting process of MCN; and this budgeting process can include addressing improvement of services offered to street traders. The street traders can even demand so.

b. Second, MCN is not laboured with legal suits with respect to the traders. If the negotiation had not taken place, legal suits may have been instigated. This is particularly real due to the expanded rights of the people of Kenya as a result of the Constitution of Kenya (2010).

5. Construction of the Wakulima Market commenced immediately after signing of the MoU between MCN and NASTHA. The location of Wakulima Market was selected with consultations with the traders, through NASTHA. Previously, the MCN proposed two alternative sites which were considered unsuitable. One was outside the CBD which would have affected the businesses; and, the other was to be located where underground was a network of storm water drainage and sewage. The new location of Wakulima Market takes care of these two wrongs.

6. Cleanliness of the CBD has been improved.

7. Security within the CBD has been enhanced. From the Budget Desk Officer/LASDAP in MCN, "the moment you negotiate and feel you are moving in the same wagon, it builds a sense of protection for the informal traders. This makes businesses thrive and in the right direction. It also enhances the security status of the town. When you have people doing business and there exist some engaging in illegal activities such as drug trafficking, the genuine and legally recognised traders will not allow it - both during the day and night. They will push these persons engaging in illegal activities out of business. This is important for our 24 hour economy approach, as proposed in *Kenya Vision 2030*. In addition, during times of chaos, the street traders are significant players in bringing about peace. They are highly affected by the chaos and would work hard to quell the chaos".

8. Laws, MCN By-laws, and regulations affecting the traders have not changed as a result of the negotiation. However, with respect, as put by the DPC, "the methodology of applying the By-laws has changed. The change - consultations". According to the Principal Administrative Officer in MCN, the Local Authority enforces the law. Prior to the negotiation it would think of getting the fattest Council Askaris to solve the problem with street traders. The negotiation made them realise it is important to sit together to discuss the problems and come up with a win-win

solution. The challenge MCN had then and even now is the ability/skills to understand that dialogue is important in resolving issues. MCN should have personnel that are able to identify a problem and, through an integrated stakeholder approach, how best to solve the problem.

9. The MCN has spoken to the formal business community on the negotiation. This it has done through their association. It explained the situation of traders outside their business premises is temporary, until the completion of the Wakulima Market.

10. From the MCN, the stationary street traders employ street children to guard their wares at night. During the day, these children operate as “traffic officers”. At a fee, they guide cars on where to park, as well as provide security for the parked vehicles. As long as the street traders are operating from the streets, the street children problem will persist. The traders do not hire adult guards as these are expensive – the street children’s fee is cheaper.

According to MCN, the street children problem is an army that if proper arrangements are not made, can be volatile. In Wakulima Market, the Council will be in charge of the security. Therefore, when preparing for the street traders, parallel measures should be undertaken to solve the problem of street children. The current rehabilitation efforts of street children by MCN are inadequate, they do not provide vocational skill training to enable the street children be self reliant. Additionally, they are hampered by inadequate funds.

11. Implementation of the negotiation has made it possible for MCN to realise in part its strategic structure plans with respect to informal traders and poverty reduction.

12. The achievements are original: their conceptualisation is not copied from other cities. The solution to the problems came from the traders’ Association, and it came to benefit both members and non-members of the Association.

13. The Association has done well and has backing of the Government. Through it, the traders can be represented in Government planning meetings; and, it is possible for the Government to plan and offer solid development services to the sector. Additionally, the Government is facilitated to check against traders that create disorder. Most likely, this latter group of traders would be non-members of the Association either out of choice due to engaging in illegal activities or vetting.

14. Not achieved is monitoring and evaluation of implementation of the negotiation. Suggested is an annual review of progress to understand impact as well as obtain recommendations that would ensure success of the negotiation. As it is:

a. Stakeholders not included in the negotiation process prior to signing of the MoU, e.g. the Provincial Administration and formal business community, want to make input in the details of the negotiation. Accordingly, this is to promote ownership amongst the various stakeholders, as well as promote coordinated action amongst relevant government departments;

b. Harassment of street traders by Council Askaris persists. Some Council Askaris arrest the traders while unaccompanied by a Police Officer, which is illegal. Council Askaris are disallowed to arrest anybody if unaccompanied by a police officer (Peter,

2012; Suleiman, 2011; Moraa, 2012). Admittedly, the magnitude of harassment is not as great as prior to the signing of the MoU; and,

c. Congestion of the CBD by the traders is still considered a problem. The traders are all over the CBD. The only area of the CBD with no or low presence of the traders is where concentrated are government offices - in specific the Provincial Administration Office.

d. One of the agreed upon issues, formation of a development market committee, is yet to be implemented. This committee was conceptualised as a permanent committee made up of all stakeholders to ensure proper planning for the town. According to NASTHA, "the problem is that there has been no facilitation [funding] to put the committee." The facilitation was to be by MCN. MCN has not prioritised it due to change of CEOs. Since signing of the MoU, the Council has had two new Town Clerks and one new Mayor. These changes have hindered the smooth implementation of the MoU.

The current Mayor and Town Clerk, however, are cooperating very well with us [NASTHA] and so we are positive implementation of the MoU will take place. Also contributing to this is that this is an election year in Kenya. The Councillors, thus, may not be an obstacle"

3.2. Lessons Learnt

1. From the MCN, NASTHA, KENASVIT and DPC respondents:

a. Elected office bearers of associations should be people that are sincere to the constituency they represent. They also should be: well conversant with the problems of the constituency they represent; well versed with the most applicable and realistic solutions to the identified problems; can fluently and reasonably present the identified problems and their probable solutions; can identify and apply their constituency's leverage vantage; are brave enough to approach the local authorities toward arriving at an amicable solution; and, are unrelenting in their quest.

b. Local Authorities, and in general planners, should avoid enforcing the law blindly. There is need to have dialogue with the relevant stakeholder to ensure the law is enforced in such a way that it makes an area a reasonable place for all to live in. For example, as the KENASVIT National Secretary puts it, "*The question by planners should be, should we make 50,000 people, who have shown resourcefulness in genuinely obtaining a livelihood suffer as a result of non-innovative thinking and poor planning on our part?*"

c. Local Authorities should have skilled personnel that can recognise a problem and, through inclusive decision making, its realistic and progressive solution(s). Street traders are thinking beings and are part of society, and can assist in arriving at progressive solutions to existing problems.

2. From KENASVIT: Unity of the marginalised is vital as regards fighting for their rights. The marginalised too should be able to identify who amongst them can sincerely promote their cause. They should not include in the negotiating team they constitute to bargain for their rights, persons that are easily intimidated, are spies of

politicians and local authorities, or have selfish interest of using them to gain political mileage.

3. From MCN and NASTHA: The street traders, through their significant voting bloc, can be a strong voice in checking the excesses of political leaders, and in general, public office bearers.

4. The new constitution of Kenya expands on the rights of the people of Kenya. Outside this, the legal framework as it is today does not provide an enabling environment for the operation of street traders. In fact, as a policy analyst from KIPPRA puts it, if the Local Authority applies the Local Authority Act as it is, small traders will have a lot of problems. Due to this, the street traders are vulnerable. As the MCN Budget Desk Officer/LASDAP puts it, crafty political leaders will work to manipulate the traders to vote for them in the pretext they will address their interests. Therefore, as NASTHA has demonstrated, in the absence of an enabling legal framework, it is important to successfully lobby relevant government agencies as well as get binding commitment from these agencies, and the commitment should be progressive.

5. Unintended situations are likely to arise from negotiations. Some may affect the society positively, while others negatively. For example, in this case, the issue of street children. It is therefore important that possibilities of unintended situations be exhaustively explored.

6. According to the DPC, it is meaningless to successfully achieve a negotiation and have no funding to implement the agreed upon points.

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5. ANNEXES

5.1. Annex 1: PART XI – Sections 163 to 166 of the Local Authority Act Cap 265 of the Laws of Kenya

Section

163 Powers to control trades and occupations

Every municipal council and, except in regard to the matters contained in paragraph (g), every town council and urban council shall subject to any other written law relating thereto, have power;

- (a) To prohibit or control peddling, hawking and street trading and to control pedlars, hawkers and street traders;
- (b) To control barbers and hairdressers and barbers' and hairdressers' shops;
- (c) To control the trade, business or occupation, and the business premises, of dealers in second-hand goods, including bottles, sacks, bones and tins;
- (d) To prohibit or control the work or trade of manufacturing flock from rags and persons engaged therein; and to prohibit the sale and use, for the purpose of manufacture, of articles of unclean flock manufactured from rags;
- (e) To control or prohibit all businesses, factories and workshops which, by reason of smoke, fumes, chemicals, gases, dust, smell, noise, vibration or other cause, may be or become a source of danger, discomfort or annoyance to the neighbourhood, and to prescribe the conditions subject to which such businesses, factories and workshops shall be carried on;
- (f) To prohibit or control the carrying on of the work or trade of a knacker or of blood boiling or cleaning, tallow melting, fat melting or fat extraction, fellmongering, skin storing, skin curing, blood drying, gut scraping, fish mongering, fish frying, leather dressing, tanning, glue making, size making, charcoal burning, brick burning, lime burning, stone crushing, manure making, manure storing, bone storing, or any other work or trade of an offensive nature which such local authority may, with the sanction of the Minister, declare to be an offensive trade for the purposes of this paragraph;
- (ff) To prohibit, control and regulate such other trades, occupations and premises as the Minister may, from time to time, by notice in the Gazette, prescribe;
- (g) To prohibit or control the work or trade of disinfection or fumigation by cyanide or other means and to penalize persons who, after due notice, refuse without reasonable ground to vacate any room or rooms occupied by them on the same floor or on any floor above that of any building where fumigation is being carried out.

163A Business permits.

1) A local authority may on receipt of an application under this Act grant a business permit to allow the conduct of a business or trade, including a profession or occupation within its area. Provided that in the case of a business, trade, profession or occupation regulated by the provisions of any other written law, a person shall prior to the submission of an application for a business permit pursuant to this subsection, satisfy all the requirements of that other written law.

(2) The fees charged by a local authority for the grant of a business permit under subsection

(1) Shall be –

(a) In the case of a consolidated permit, an amount equal to the sum of fees due in respect of each of the business activities covered under such permit for which the supplicant would otherwise require a separate permit; and

(b) In the case of a single business permit, the amount due in respect of the class of trade or business covered under such permit.

(3) Notwithstanding any other provision of this act or any by-laws made there under, a penalty of three percent of any fees or charges payable under this section which remain unpaid beyond the period prescribed for such payment shall be payable by the licensee for every month or part thereof during which such fees or charges remain unpaid.

(4) A local authority shall issue such type of business permit, either single or consolidated, as it deems appropriate for the conduct of business within its area, but shall not issue both types of business permit for such area.

(5) Notwithstanding subsection (1), a local authority shall not refuse to grant or renew a business permit unless –

(a) The applicant has not supplied all the information required for such grant or renewal; or

(b) The applicant has not paid the required business permit fee or any other fees or charges due to the local authority at the time of the application.

(6) A local authority may cancel a business permit where, upon receipt of a written report from an inspector appointed under this act or any other written law, it finds that the business or trade to which it relates endanger the health or safety of the persons residing in the neighbourhood.

164 Applications for licences

(1) A local authority shall have power to summon any applicant for, or any objector to, the grant of a licence, to give evidence or to produce books or documents at any sitting of the local authority or a committee thereof held for the purpose, of hearing the application for such licence, and any such person refusing or omitting without sufficient cause to attend and give evidence or to produce books or documents in his possession or under his control as required by such summons shall be guilty of an offence:

Provided that every person summoned under this section to give evidence or produce books or documents shall be entitled to all the privileges to which a witness summoned to give evidence or produce books or documents before the High Court is entitled.

(2) Any witness giving evidence before a local authority or a committee thereof at the hearing of an application for any such licence may be required to give evidence on oath which the person presiding at such hearing is hereby empowered to administer.

165 Powers to refuse to grant or renew licences and to cancel licences

(1) A local authority may refuse to grant or renew any licence which it is empowered under this Act or any other written law to grant on any such grounds as it may, by bylaw, specify and in addition upon any of the following grounds whether specified in such by-laws or not –

(a) With respect to any licence whether relating to a trade, business or occupation, or to premises or otherwise –

(i) That the premises in or at which the applicant intends to carry on his trade, business or occupation do not conform to the requirements of any by-laws in force in the area of such local authority, whether made under this Act or any other written law;

- (ii) That sufficient provision for the needs of the area of such local authority already exists;
- (iii) That the granting of such licence or the renewal hereof, as the case may be, would be contrary to the public interest; and

(b) Additionally, with respect to any licence relating to the use of premises as a theatre, music hall, concert room or other place of amusement, or as a restaurant or eating house –

- (i) That the applicant has failed to produce satisfactory evidence of good character;
- (ii) That the premises in respect of which the licence is sought or any adjacent premises owned or occupied by the applicant are frequented by persons of bad character;
- (iii) That the granting of such licence or the renewal thereof would be calculated to cause nuisance or annoyance to persons residing in the neighbourhood; and

(c) Additionally, with respect to any licence for the carrying on of any work or trade specified in section 163 or under paragraph (f) thereof declared to be an offensive trade –

- (i) That the premises used or proposed to be used therefor by the applicant are unsuitable for the purpose;
- (ii) That the method adopted or proposed to be adopted by the applicant for preventing noxious or offensive vapours, gases or smells arising from such work or trade are not efficient.

(2) A local authority may cancel any licence granted by it on any such grounds as it may, by by-law, specify and, in addition, on any of the following grounds, whether specified in such by-law or not –

(a) With respect to any licence, that it is contrary to the public interest for such, licence to remain in force; and

(b) Additionally, with respect to any licence specified in subsection (1) (b) –

- (i) That the premises to which the licence relates or any adjacent premises owned or occupied by the holder of the licence are frequented by persons of bad character;
- (ii) That the continuation of such licence in force would be calculated to cause nuisance or annoyance to persons residing in the neighbourhood; and

(c) Additionally, with respect to any licence for the carrying on of any work or trade specified in section 163 or under paragraph (f) thereof declared to be an offensive trade –

- (i) That the premises used by the holder of the licence have become unsuitable for the purpose;
- (ii) That the methods adopted by the applicant for preventing noxious or offensive vapours, gases or smells arising from the work or trade to which such licence relates are not efficient.

(3) Any applicant for the grant or the renewal of a licence or a business permit whose application has been refused, and any person whose licence or business permit has been cancelled, by a local authority under this section may appeal against such refusal or cancellation to a subordinate court of the first class within whose jurisdiction the premises in or at which the applicant intended to conduct or was conducting his trade, business, or occupation is situate, and in the event of the appellant satisfying the court that the licence or business permit or renewal thereof was refused or, as the case may be, that the licence was cancelled on insufficient grounds, the court may order such local authority to grant such licence or business permit or a renewal thereof or, as the case may be the court may declare that the cancellation was invalid.

(4) Where the court orders a local authority to grant such licence or business permit or renewal thereof, then, subject to subsection (5), such licence or business permit or a renewal thereof shall be granted accordingly; and where the court declares that the cancellation of a licence was invalid, then subject to subsection (5), the licence or business permit which the local authority purported to cancel shall remain in force as if no such purported cancellation had been made.

(5) The appellant or the local authority concerned in any appeal under subsection (3) may appeal to the High Court against any such order or declaration of the subordinate court and the decision of the High Court thereon shall be final.

166 Planning

Every municipal council, county council or town council may, subject to any other written law relating thereto, prohibit and control the development and use of land and buildings in the interest of the proper and orderly development of its area.

5.2. Annex 2: PART XIV of the Local Authority Act Cap 265 of the Laws of Kenya

Section

201 Power to make by-laws

(1) Subject to section 202, a local authority may from time to time make by-laws in respect of all such matters as are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants of its area or any part thereof and for the good rule and government of such area or any part thereof and for the prevention and suppression of nuisances therein and, more particularly, but without prejudice to the generality of the foregoing –

(a) For controlling any of the things which it is empowered by or under this Act to do, establish, maintain or carry on; and

(b) For controlling or regulating any of the things which, and any of the persons whom, it is empowered by or under this Act to control or regulate; and

(c) For prohibiting or preventing by prohibition any of the things which it is empowered by or under this Act to prohibit; and

(d) For requiring or compelling the doing of any of the things which it is empowered by or under this Act to require or compel.

(2) A local authority may, by by-law, prescribe all or any of the following penalties which may be imposed for breach of any by-law made by it under this Act, that is to say –

(a) A fine not exceeding two thousand shillings in respect of a first offence and not exceeding three thousand shillings in respect of a second or subsequent offence, or imprisonment for a period not exceeding six months in respect of a first offence and not exceeding nine months in respect of a second or subsequent offence, or both such fines and such periods of imprisonment; and

(b) In addition to the penalty provided in the preceding paragraph, in the case of continuing breach of any such by-law, a fine not exceeding twenty shillings for every day during which the offence continues: Provided that any by-law which under this paragraph prescribes a fine for each day during which an offence continues shall also provide that the aggregate of any such fines imposed shall not, in the case of any one continuing breach of the by-law in question, exceed two thousand shillings; and a local authority may, by by-law, further

prescribe that, in addition to any such penalty as aforesaid, any expenses incurred by the local authority in consequence of the breach of any by-law made by it under this Act or in the execution of any work directed by any such by-law to be executed by any person and not executed by him, shall be paid by the person committing such breach or failing to execute such work.

(3) Any by-law made by a local authority under this Act may –

(a) Require acts or things to be performed or done to the satisfaction of a specified person, and may empower a specified person to issue orders to any person requiring acts or things to be performed or done, imposing conditions and prescribing periods and dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled; and

(b) Confer on the officers of such local authority such powers of inspection, inquiry and execution of works as may be reasonably necessary for the proper carrying out or enforcement thereof.

(4) Where a local authority is empowered to make by-laws controlling the doing of any act, and such by-laws require any person to obtain a licence from a specified authority before the doing of such act, such by-laws may require the deposit of such sum or the execution of a bond with or without sureties, as may be prescribed in such by-laws, in addition to any fee which may be prescribed, such sum to be refunded or such bond to be void, as the case may be, if the person to whom such licence is granted complies with all the conditions of such licence.

202 Restrictions on making by-laws

(1) A local authority shall not, in exercise of the general power conferred by subsection (1) of section 201 to make by-laws for the maintenance of the health, safety and well-being of the inhabitants or for good rule and government or for the prevention and suppression of nuisances, make any by-law under that subsection as respects its area of jurisdiction or any part thereof, if such by-law could be made as respects the same area or such part thereof under any written law other than this Act whether by that local authority or any other local authority.

(2) Where any inconsistency or repugnancy exists between any by-law made under this Act by the council of a county as respects any county division or any part thereof and any by-law made under this Act by the council of that county division as respects the county division or such part thereof, then as respects that county division or part thereof and to the extent of such inconsistency or repugnancy, the by-law which first came into operation, or where both such by-laws came into operation on the same day, the by-law made by the council of the county shall prevail.

(3) Nothing in this Act contained shall be deemed to empower a local authority to make by-laws overriding or derogating from the provisions of any other written law for the time being in force in Kenya.

203 Procedure for making by-laws

1) At least fourteen days before the making by any local authority of any by-laws under this Act, notice of the intention to make such by-laws and of the general purport thereof shall be given in one or more local newspapers circulating in the area to which the by-laws are intended to apply: Provided that a town council, a county council, or a council of a county division, with the consent of the Minister and in lieu of compliance with the foregoing provisions of this subsection may, before making any by-laws under this Act, give such

length of notice in such manner of the intention to make such by-laws and of the general purport thereof as the Minister may direct, or in the absence of any such direction, as it thinks reasonable, for bringing the notice to the attention of the inhabitants of the area to be affected by such by-laws.

(2) For at least fourteen days before the making of any by-laws under this Act a copy of the proposed by-laws shall be deposited at the offices of the local authority which intends to public inspection without payment, and the local authority shall on application by any person furnish to such person a copy of such proposed by-laws for which in its discretion, the local authority may make a charge of such amount, not exceeding fifty cents for every hundred words thereof, as it may determine.

(3) Any objection to the proposed by-laws shall be lodged in writing with the local authority within twelve days after the date on which the notice, or the latest notice where there is more than one, of the intention to make such by-laws was given under subsection (1) or within such longer period as may be specified in such notice: Provided that where a longer period is specified in the notice such by-laws shall not be made until at least two clear days have elapsed after the expiration of such longer period.

204 Submission of by-laws for approval

(1) After any by-law has been made by a local authority under this Act it shall be submitted to the Minister for his approval.

(2) Every by-law submitted for approval under subsection (1) of this section shall be accompanied by –

(a) A certified copy of the minutes of the meeting of the local authority at which the by-law was adopted;

(b) A certificate by the clerk that section 203 of this Act has been complied with; and

(c) Copied of any objection to the adoption of the by-law which has been lodged in writing with the local authority, or, if no such objection has been lodge, a statement to that effect.

(3) The Minister may approve, with or without alteration or reject any such by-law.

(4) No by-law made under this Act shall have the force of law until it has been approved, whether with or without alteration, by the Minister, and published, or notice thereof published, in the manner provided by section 205 (1) or, in the case of any bylaw exempted under the provision to section 205 (1), until it has been communicated to the inhabitants pursuant to section 205 (3).

205 Publication communications and coming into operation of by-laws, etc.

(1) Upon the signification of the approval of the Minister of any by-law, the clerk of the local authority which made such by-law shall cause the by-law, or a notice stating that the by-law has been approved, to be published in the Gazette: Provided that the Minister may exempt any town council, county council or council of a county division from compliance with the requirements of the foregoing provisions of this subsection in respect of its by-laws generally or in respect of any class of bylaws or any particular by-laws.

(2) Subject to any other written law (including the other provisions of this Act) every by-law shall have the full force law within the area to which it applies on the date of publication of the by-law or of the notice, as the case may be, or, in the case of a bylaw exempted from publication in the Gazette, on the date on which it is communicated to the inhabitants under subsection (3) or, in either case, on such other day as may be expressed to the by-law as being the date on which the same is to come into operation and, if another date is so

expressed, the notice, where a notice is published under subsection (1), shall so state, or, in the case of a by-law exempted as aforesaid, such date shall be communicated to the inhabitants of the area affected thereby in like manner as for the substance and effect thereof.

(3) The substance and effect of all by-laws which have been duly approved shall be communicated by the local authority which made them to the inhabitants of its area in such manner as the Minister may direct or, in the absence of any such direction in such manner as the local authority shall determine, and in the case of any such communication which is made otherwise than by publication in the Gazette, the clerk of the council which made the by-law shall notify the Minister when such communication has been made and of the date thereof.

206 Admissibility in evidence of signed copy of by-laws and certificates of clerks

(1) A copy of every by-law which has been approved by the Minister, signed or purporting to be signed by the clerk of the local authority which made it and approved by the Minister, shall be kept by the clerk and shall be admissible in evidence without further proof and shall be evidence of the due making of such by-law and of the contents thereof, (2) The production of a printed copy of any by-laws purporting to be made by a local authority upon which is endorsed a certificate purporting to be signed by the clerk of the local authority stating—

(a) That the by-laws were made by that local authority;

(b) That the copy is a true copy of the by-laws;

(c) That on a specified date the by-laws were approved by the Minister; and

(d) The date from which the by-laws have effect, shall be prima facie evidence of the facts stated in the certificate without proof of the handwriting or official position of the person purporting to sign the certificate.

207 Deposit, inspection and supply of copies of by-laws

A copy of every by-law which has been approved by the Minister shall be deposited at the offices of the local authority which made the by-law and shall at all reasonable hours be open to public inspection without payment, and the local authority shall on application of any person furnish to such person a copy thereof for which, in its discretion, the local authority may make a charge of such amount not exceeding five shillings, as it may determine.

208 Prosecution for contravention of by-laws

All offences against any by-law made under this Act and in force in any part of the area of a local authority shall be deemed to be offences against this Act, and in any prosecution for contravention of any such by-law, it shall be sufficient to allege that the accused is guilty of contravening a by-law, the number and title of which shall be stated, of the local authority concerned and to allege the act constituting such contravention.

209 Order to affix to premises notice of conviction for sale, etc., of unsound food (1) Where any person is convicted a second or subsequent time within a period of twelve months of having contravened any by-law by selling or exposing for sale or depositing for the purpose of sale or preparation for sale, or of having in his possession, any animal or article (whether solid) intended for human consumption which is diseased or unwholesome or unfit for human consumption, the court, if it finds that such person knowingly or wilfully committed both or all the offences, may, in addition to inflicting any other punishment, order that a

notice of the facts be affixed, in such form and manner and for such period, not exceeding twenty-one days as may be specified in the order, to any premises occupied by such person, and may further order such person to pay the costs of such affixing.

(2) If any person obstructs the fixing of any such notice, or removes, defaces or conceals such notice while affixed during the said period, he shall be guilty of an offence and shall, for each such offence, be liable to a fine not exceeding two hundred shillings.

210 Power to make adoptive by-laws.

(1) The Minister may by order –

(a) Make adoptive by-laws in respect of any matter concerning which a local authority has power to make by-laws under this Act or any other written law; and

(b) Specify the extent to which those by-laws may be adopted by any local authority, or class of local authorities.

(2) Subject to this section and any order made under subsection (1), a local authority may adopt any such by-laws as aforesaid which relate to any of its functions.

(3) Before adopting any such by-laws, the local authority shall give notice of its intention so to do, and section 203 (1) shall apply in respect of such notice as the same applies in respect of the notice under that section.

(4) The adoption of any such by-laws by a local authority shall be by resolution of the local authority, which resolution shall, in addition, state the date of the coming into operation thereof.

(5) The resolution of a local authority adopting any by-law under this section shall be published in the Gazette: Provided that the Minister may exempt any county council or council of county division from compliance with the foregoing provisions of this subsection generally in respect with or particular by-laws so adopted.

(6) Section 205 (3) shall apply with respect to by-laws adopted by a local authority under this section in like manner as respects by-laws referred to in that section.

(7) By-laws adopted by a local authority under this section shall come into operation on the date of publication in the Gazette of the resolution adopting the same or where the local authority concerned is exempted from publishing the resolution, on the date on which the clerk of the local authority notifies the Minister that the adopted by-laws have been communicated to the inhabitants under subsection (6) or, in either case, on such other day as may be expressed in the resolution adopting the by-laws as being the date on which the by-laws are to come into operation.

(8) By-laws adopted by a local authority under this section –

(a) Shall have the same force and effect as if made by the local authority;

(b) May be revoked by resolution of the local authority, to which resolution subsection

(5) Shall, *mutatis mutandis*, apply, and the substance and effect of any such resolution shall be communicated to the inhabitants in like manner as is provided in section 205

(3) And such revocation shall take effect from the date of publication of the resolution in the Gazette or, if the local authority is exempted from so publishing the resolution, from the date on which the clerk of the local authority notifies the Minister that the resolution has been communicated to the inhabitants as aforesaid; and

(c) May be amended by the adoption of an amendment made to them by the Minister, but unless the local authority concerned adopts any such amendment under this section, such amendment shall not be effective within its area.

211 Councils of county divisions may enforce by-laws of county councils

The council of a county division shall have power to enforce by-laws made by the council of the county in which such county division is situate, which are for the time being in force in such county division or any part thereof.

5.3. Annex 3: Municipal Council of Nakuru (Hawkers) By-Laws, 2004

IN EXERCISE of the powers conferred by Section 201 of the Local Government Act Cap 265, the Municipal Council of Nakuru hereby make the following By-Laws:

MUNICIPAL COUNCIL OF NAKURU (HAWKERS) BY-LAWS, 2004

1. These By-laws may be cited as the Municipal Council of Nakuru (Hawkers) By-laws, 2004
2. In these By-Laws, except where the context otherwise requires:
 - a. "Hawker" means any person who travels with or without a vehicle, park animal or carrier and who carries goods or articles for sale while travelling, and does not include street trader.
 - b. "Municipal Inspector" means the person appointed in writing by the Council to control hawking and may arrest, without warrant, any person who in his presence commits any offence under the provisions of these By-laws and may detain such person until he can be delivered into the custody of a Police Officer to be dealt with according to the law and includes Council Askaris.
 - c. "Council" means Municipal Council of Nakuru
 - d. "Town Clerk" means the person for the time being holding the office of the Town Clerk, his deputy and any other officer of the Council authorised by the Town Clerk in writing for the purpose of these By-laws.
3. No person shall hawk any goods within the boundaries of the Municipal Council of Nakuru unless he shall be in lawful possession of a current permit issued by the Town Clerk authorising him to do so.
4. (i) Every such permit shall be in such a form as the Town Clerk shall direct and may specify by endorsement thereon conditions regulating the nature or class of goods to be hawked
(ii) Any licensed hawker found either hawking goods not authorised by such permit shall be guilty of an offence.
5. No person shall hawk within the boundaries of the Municipal Council of Nakuru any meat, fish, cooked food whether fresh or cooked.
6. No person to whom a hawker's permit has been issued shall lend, hire, sell, transfer or otherwise dispose of such license to any other person.
7. The Municipal Council of Nakuru may at any time, by resolution restrict the number of permit to any class which may be taken out under the provisions of these By-laws for such period as shall be specified in such resolution.
8. (a) There shall be fees payable to the Council at the time a permit or hawker's badge is issued under the provisions of these By-laws.

(b) Fees payable in accordance with the provisions 8(a) of these By-laws shall be determined by the council from time to time.

(c) The following relates to the period a permit shall be issued under the provision of these By-laws:

A permit not exceeding 12 months

A permit not exceeding 6 months

A permit not exceeding 3 months

9. No person to whom a hawker's permit is issued have the right to sell goods in any room, shop or other place or to distribute or publish any handbill, poster or advertisement in such a manner as to contravene the provisions of any By-laws, from time to time in force within the boundaries of Municipal Council of Nakuru.

10. No hawker in any street shall off-load his vehicle or other receptacle for the carriage of his goods for the purpose of exhibiting or dealing in goods in any manner other than from such vehicle or receptacle.

11. (a) Any person carrying on the occupation or trade of a hawker shall on demand by Police Officer, Municipal Inspector or Municipal Askari or any other person authorised in by writing by the Town Clerk, produce a hawker's permit.

(b) Any such officer, Inspector or Askari may for the purpose of these By-laws inspect any article or goods which he has reasonable cause to believe such class of goods are not endorsed on the permit or contravenes with any of the provisions of these By-laws.

(c) Failure to produce a hawker's permit shall be an offence under these By-laws.

(d) Any person who obstructs, hinders or otherwise interferes with any such officer, Inspector or Askari in the execution of his duties in accordance with any of the provisions of these By-laws, shall be guilty of an offence.

12. (a) The Town Clerk may refuse to issue a permit and may also cancel a permit of these upon the holder being convicted of any offence against these By-laws.

(b) Offences against these By-laws shall cognizable to the police.

13. Any person who is guilty of an offence under these By-laws shall be liable on conviction to a fine of three thousand shillings or in default of payment to imprisonment for a period not exceeding six months, or both such fine and imprisonment.

14. THE NAKURU MUNICIPALITY (PART XI-HAWKERS)

(REVOCAATION) BY-LAW

(a) These By-laws may be cited as the Nakuru Municipality (Part XI-HAWKERS) (REVOCAATION) BY-LAWS, 2001

(b) PART XI-HAWKERS - of the Nakuru Municipality Gen. N100

By-laws is hereby REVOKED Of 1937

15. Failure to produce a permit on demand shall be an offence against these By-laws.

Made this day of2005

By order of the Municipal Council of Nakuru

.....
MARGARET M. JOBITA (MRS)
TOWN CLERK

Approved this day of 2005

HON. MUSIKARI N. KOMBO, MP
MINISTER FOR LOCAL GOVERNMENT

5.4. Annex 4: Registering a Limited Liability Company in Kenya: Steps and Fees Involved

(Excerpted from Doing Business 2011, World Bank Group)

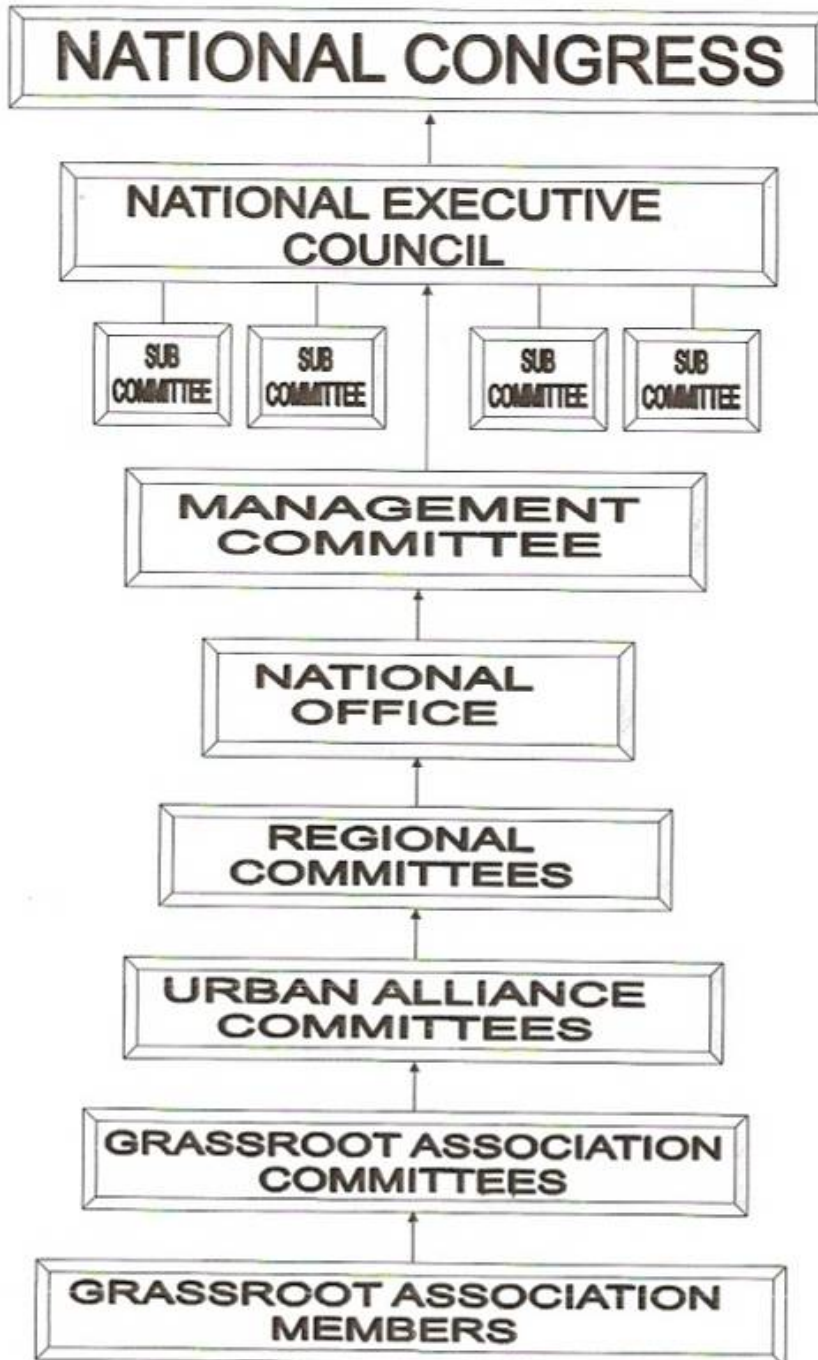
	Procedure	Duration	Associated Costs
1.	<p>State registration of legal entity, statistical, and tax registration with the Centre for Public Registration The company name reservation lasts 30 days but can be renewed for a similar period.</p>	3 days	KES 100 per name reservation
2.	<p>Stamp the memorandum and articles and a statement of the nominal capital Effective January 1, 2005, the Kenya Revenue Authority (KRA) took over stamp duty collection from the Ministry of Lands and Housing. As an administrative requirement, the KRA now requires the personal identification numbers (PINs) of all parties on whose behalf duty-stamped documents are submitted. Documents must be first assessed by the Stamp Duty Office before payment can be processed by the KRA-designated banks. The process has lengthened initially to about 2 weeks because the Stamp Duty Office waited to receive confirmation of bank payment after clearance of funds. However, the time has reduced in 2008 as a result of better communication between the Ministry of Lands and housing and Kenya Revenue Authority (KRA) to 5-10 days. Bank handling charges of KES 100 for each transaction are also due.</p>	5 days	1% of nominal capital + KES 2,020, stamp duty on Memorandum and Articles of Association
3.	<p>Pay stamp duty at bank</p>	1 day (included in the previous procedure)	KES 100 bank commission
4.	<p>Declaration of compliance (Form 208) is signed before a Commissioner of Oaths /notary public According to the Companies Act (Cap. 486), An advocate engaged in the formation of the company or a director or company secretary named in the Articles must sign Form 208, the declaration of compliance, which accompanies the registration documents to be submitted to the Registrar of Companies. (Simultaneous with procedure 2)</p>	1 day	KES 200
5.	<p>File deed and details with the Registrar of Companies at the Attorney General's Chambers in Nairobi a) The founder must file the incorporation deed and the required documents and forms (listed below) with the Registrar of Companies, which includes:</p> <ul style="list-style-type: none"> • Stamped memorandum and articles of association • Statement of capital 	7- 14 days	KES 6360

Procedure	Duration	Associated Costs
<ul style="list-style-type: none"> • Form 201, Notice of Situation of Registered Office • Form 203, Particulars of Directors and Secretary • Form 208, Declaration of compliance with the Companies Act. • Copy of the company name approval <p>b) Fee schedule for registration:</p> <ul style="list-style-type: none"> • For the first KES 100,000: KES 2,800. • For every KES 20,000 after the first KES 100,000: KES 120, subject to a maximum of KES 60,000. • Filing fee for three forms: KES 600 		
<p>6. Register with the Tax Department for a PIN and VAT online</p> <p>Registration for a personal and a company identification number (PIN) is required to register for the VAT (PIN certificates of at least two directors or 2 shareholders or a director and the secretary are required), the local service tax, and the pay-as-you-earn (PAYE) tax. The founder must file the certificate of registration and a copy of the memorandum and articles of association. Due to new online reforms, the application for a PIN and VAT registration can now be done concurrently on-line. Unless the KRA has already received confirmation of incorporation of the company from the Companies Registry, one must still submit the Certificate of Incorporation and receive log-in details from the KRA for the purpose of applying for a PIN and VAT registration.</p>	1 - 2 days	No Charge
<p>7. Apply for a business permit</p> <p>The fee to apply for a business permit varies by type of business, number of employees, and size of the company's premises. The fee is payable to the <u>Nairobi City Council</u>, Licensing Department. The Council will issue a business permit.</p> <p>Fee schedule for business permit:</p> <ul style="list-style-type: none"> • Medium trader, shop, or retail service from 5 to 20 employees and/or premises 50–300 sq. m. (fair location): KES 5,000. • Mid-size business of 50 employees and premises 300 sq. m.: about KES 20,000 to KES 50,000, depending on the nature of the business. <p>The Licensing Laws (Repeals and Amendments) Act, 2006 (enacted in December of 2006 and came into effect on May, first, 2007), amends the Local Government Act (Cap. 265) by reducing the number of business permits required for a distributor of goods or provider of services to carry on its business activities. Applicants</p>	5 days	KES 5,000

	Procedure	Duration	Associated Costs
	having obtained a business permit to operate from one local authority will not be required to obtain another business permit in another local authority. In addition, business permit applicants will have an opportunity to elect whether to apply for a one or two-year permit. The 2006 law also eliminated the requirement to obtain a trading license in addition to the permit.		
8.	<p>Register with the National Social Security Fund (NSSF)</p> <p>The <u>National Social Security Fund</u> provides the employee with a lump-sum retirement benefit. Historically, the rate of return paid by the state is considerably less than that achieved by private schemes, but participation is mandatory. The employer pays a standard contribution of about 1% of salary, subject to a maximum of KES 400 per month. Half the contribution is deductible from the employee's salary. The precise amount of the contribution (where less than the maximum) is determined by reference to salary bands.</p>	1 day	No Charge
9.	<p>Register with the National Hospital Insurance Fund (NHIF)</p> <p>The employee contributes a fixed sum to the <u>National Hospital Insurance Fund (NHIF)</u>, which must be deducted by the employer from the employees' salary. The maximum contribution is KES 320 per month. The contributions are used to offset the costs of medical treatment, but they only cover a fraction of actual costs. Hence, most companies provide employees with medical insurance.</p>	1 day	No Charge
10	Register for PAYE	1 day	No Charge
11	<p>Make a company seal after a certificate of incorporation has been issued</p> <p>Seals are made by private entities who require sight of a copy of the certificate of incorporation.</p>	2 days	

Sources: <http://www.businesslicense.go.ke/>;
<http://www.doingbusiness.org/data/exploreeconomies/kenya/starting-a-business/>

5.5. Annex 5: Kenya National Alliance of Street Vendors and Informal Traders (KENASVIT) Organogram



Source: KENASVIT

5.6. Annex 6: NASTHA Negotiation Team Meeting

NAKURU STREET TRADERS AND HAWKERS ASSOCIATION NEGOTIATION TEAM MEETING

HELD ON WEDNESDAY 11TH AUGUST, 2010 AT KOKEB

MEMBERS PRESENT

1. Rahab Mugure
2. Wilson Wachira
3. Simon Sangale Nasieku – Chairing Meeting
4. Ronald Abuga – Taking Minutes
5. Samuel Kamuyu
6. Rose Kariuki Muraya
7. Julius Amukanga
8. Cosmas Khamuka
9. Heho Wambugu

APOLOGIES

1. Edwin Ingostsi
2. Isaac Kahoto
3. Geoffrey Maina

AGENDA

1. Prayers and Chairperson's remarks
2. Chairperson's meeting with council representatives
3. Draft MoU
4. Breakfast Meeting

MIN 08/11/08/2010 PRAYER AND CHAIRPERSON'S REMARKS.

The emergency meeting was called to order at 10:30 a.m. by the Chairperson and opened with prayers by Samuel Kamuyu. The Chairperson thanked the committee members for availing themselves at short notice. The Chairperson briefed the members on the progress made so far in reaching out to other stakeholders who have shown support for our cause in ensuring street vendors and hawkers are not evicted from the streets. The area member of parliament Hon. Lee Kinyanjui, several Councillors, peace monitor of the district peace committee Dr. Wanguru and the media were fully behind us.

MIN 09/11/08/2010 THE CHAIRPERSON'S MEETING WITH MAYOR, TOWN CLERK AND MUNICIPAL TREASURER

The Chairperson explained in detail how in the previous day at around 6:00 p.m, the Municipal treasurer had called him and requested an impromptu meeting to be attended by him, the Mayor and Town Clerk. During the meeting it was revealed that the council was under pressure to evict street traders from the CBD due to the forthcoming KIMSCA games and regional inter secondary games. The Council team gave various options including relocation to the outskirts of the CBD, while the Chairperson NASTHA gave proposal on

maintaining the informal traders in the CBD but on fulfilling certain conditions which will be beneficial to Municipal Council and street traders. The Chairperson's proposal carried the day and he was requested to urgently write up an MoU which he should present to the Town Clerk before the end of the next day 11th August 2010.

MIN 10/11/08/2010 THE DRAFT MOU

The Chairperson tabled the draft MoU for discussion and the issues he had highlighted were agreed upon unanimously without amendments or addition. The issues included KIMSCA games, cleanliness at worksite, stoppage to eviction, reduction of fees and charges for mobile hawkers, decongestion, street lighting, a census of hawkers, and formation of a development market committee. He was praised for drafting the MoU and given a go ahead to present to the Municipal Town Clerk Sheikh Abdullahi.

MIN 11/11/08/2010 BREAKFAST MEETING TO SIGN MOU

The negotiation team resolve to mobilise committee representing street traders located in various streets, lanes and roads within CBD to attend the signing ceremony of the MoU on Friday 13th August, 2010 starting 9:00 a.m. at Old Town Hall. The team agreed to meet on 12th August 2010 at 2:00 p.m., KENASVIT office to get updates from members on progress made in ensuring the 13th August 2010 breakfast ceremony was a success.

The Chairperson thanked the team for speaking in one voice and closed the meeting with a word of prayer at 2:45 p.m.

.....	12/08/2010
Chairperson	Date	Sign

.....	12/08/2010
Secretary	Date	Sign

5.7. Annex 7: MoU between MCN and NASTHA

PUBLIC PRIVATE PARTNERSHIP BETWEEN MUNICIPAL COUNCIL OF NAKURU STREET TRADERS AND HAWKERS ASSOCIATION (NASTHA)

MEMORANDUM OF UNDERSTANDING DURING THE BREAKFAST MEETING BETWEEN MCN AND NASTHA ON FRIDAY 13TH AUGUST 2010 AT OLD TOWN HALL NAKURU

The following issues were unanimously agreed upon for purposes of ensuring a win-win solution to both parties.

1. The hosting of this year's KIMSCA games in Nakuru will result in no undue interference to hawkers and street vendors businesses. In fact it will spur their businesses as was the case in South Africa during the just concluded World Cup Games.
2. Street traders will continue to ensure cleanliness in their trading sites by maintaining acceptable waste disposal methods (as earlier agreed in 2009).
3. There will be no arbitrary eviction of hawkers and street traders without first providing an agreed suitable alternative in compliance with the decent work agenda of International Labour Organisation (ILO).
4. Mobile hawkers will from 1st August 2010 pay a monthly market fee of Ksh. 200 if paid before 11th of each month. Normal rates will apply after 10th of each month.
5. All vending tables should not exceed 3 feet shelves from the wall. All movable stands used by the traders should be removed from streets once they close business. This will help in decongesting streets/lanes and allowing pedestrians space to walk.
6. MCN to prioritise street lighting along Kenyatta Avenue and CBD. This will improve security and facilitate traders to operate 24 hours.
7. The street traders/hawkers committee will work hand in hand with MCN to ensure compliance with agreed terms, i.e. obstruction, cleanliness, hygiene, security and prompt payment of council fees and charges. They will also ensure disciplinary action is taken against wayward traders.
8. The Partnership will conduct a census for hawkers/street traders which will create a database followed by issuance of identification cards. This will help in planning, revenue collection and collaboration between MCN and hawkers.
9. A Development Market Committee incorporating the partners and other stakeholders will be put in place and facilitated to perform its functions. It will deal with administration issues like security, design, development, allocation, and management of market stalls. It will also involve itself in increasing informal traders' income through the recently budgeted local government revolving loans funds for youths and small medium enterprises.
10. Frequent dialogue forums will take place to review progress and sensitise hawkers on Council plans and By-laws. This will help in compliance by traders.

Signed

.....
H.W. MAYOR JOHN KITILIT (M.C.N)

.....
A.S. ABDULLAHI
TOWN CLERK M.C.N

.....
SIMON SANGALE OLE NASIEKU
CHAIRPERSON NASTHA

Dated 13th August 2010, Old Town Hall Nakuru